Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

October Term, 1999

Joseph G. Stepard and Malania M. Stepard,
Husband and Wife, John P. Wilde, Eileen Lipari

Petitioners,

v.

United States of America

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Petition for Writ of Certiorari

Joseph G. Stepard*
Malania M. Stepard*
P.O. Box 3314
West Sedona, Arizona
(520) 649-0945

John Wilde*
Eileen Lipari*
5804 W. Vista Ave. #165
Glendale, Arizona 85301
(623) 842-1422

*Petitioners, In Propria Persona

29pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the jurisdiction of the subject matter was lacking in both the district court and court of appeals after the Respondent failed to prove that, pursuant to 26 U.S.C. §§ 7401 and 7403, the Secretary or his delegate authorized or sanctioned the proceedings and the Attorney General or her delegate directed that the action to collect or recover taxes from Petitioners Joseph and Malania M. Stepard and to forelose the tax liens against certain real property currently owned by Petitioners John P. Wilde and Eileen Lipari.

2. Whether the jurisdiction of the subject matter was lacking in both the district court and court of appeals after the Respondent failed to plead and prove that the Secretary or his delegate failed to determine and mail notice of deficiency required under the provisions of 26 U.S.C. §§ 6212 and 6213.

3. Whether the action of *United States v. Stepard, et. al.*, CIV 93-0919 PHX EHC, United States District Court in and for the District of Arizona, was subject to the rule of compulsory counterclaim and should have been brought as a counterclaim to *Stepard et. al. v. United States*, CIV 93-0060 PHX PGR, United States District Court in and for the District of Arizona, instead of as a separate cause of action.

4. Whether Petitioners John P. Wilde and Eileen Lipari should have been substituted, pursuant to Rule 25, Federal Rules of Civil Procedure, and granted standing to defend their interests in the property as the assignees and successors in interest in the property, where such assignment was made pursuant to Arizona Law.

THE PARTIES

In addition to the parties identified on the cover to this Petition, International Tax Strategies, in its capacity as Trustee of Betach LT01 Trust and Chacah LT01 Trust and Jimmy C. Chisum were originally named as parties in the action. Betach LT01 Trust and Chacah LT01 Trust were the owners record of the subject property at the commencement of the action in the district court. Jimmy C. Chisum was doing business as (d/b/a) International Tax Strategies at the time the action was commenced. In his capacity as the Trustee of Betach LT01 Trust and Chacah LT01 Trust he made the assignment of interest in the subject property to John P. Wilde and Eileen Lipari. Jimmy C. Chisum was also named in his capacity as Trustee of Jo-Mal Trust.

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The Petitioners, Joseph G. Stepard and Malania M. Stepard, husband and wife (Stepards) and John P. Wilde and Eileen Lipari, hereby Petition this Court for its Writ of Certiorari to the United States Court of Appeals in and for the Ninth Circuit to review its August 13, 1999 memorandum.

OPINION OF THE COURT BELOW

The decisions and orders of the United States District Court in and for the District of Arizona and the United States Court of Appeals in and for the Ninth Circuit were unpublished and are found in Appendix A to this Petition.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its judgment affirming the District Court's judgment on August 13, 1999. [App., Pgs. A-1 to A-2]. The Petitioners timely filed their Petition for Rehearing which was denied on January 13, 2000. [App., Pg. A-5]. The jurisdiction of this Court to review the judgment of the United States Court of Appeals by writ of certiorari is invoked under the provisions of 28 U.S.C § 1254(1).

STATUTORY PROVISIONS INVOLVED

The following Statutes and Rules are involved. The text of each provision is found in Appendix B. 26 U.S.C. §§ 6212(a) and (b), 6213(a), 7401 and 7403; Rules 12(h)(3), 13, 24 and 25, Federal Rules of Civil Procedure; Rule 17(b), Arizona Rules of Civil Procedure.

STATEMENT OF THE CASE AND FACTS

1. This was an action commenced by the Respondent United States against Petitioners Joseph G. Stepard and his wife Malania M. Stepard, to reduce income taxes alleged to have been assessed against the Stepards for the years 1981 through 1985. [App., Pg. A-29]. Although not a party to this appeal, the original complaint also named Jimmy C. Chisum in his capacity as Trustee of Jo-Mal Trust and International Tax Strategies (ITS) in its capacity as

Trustee of Betach LT 01 Land Trust and Chacah LT 01 Land Trust. *id.*

2. On January 8, 1993, the Petitioners commenced an action in quiet title, pursuant to 28 U.S.C. § 2410 against the Respondent United States. [App., Pg. A-19]. It was named ***Stepard, et. al. v. United States***, CIV 93-0060 PHX RCB (Case I). The United States answered that Complaint on March 9, 1993. [App., Pg. A-25]. The Respondent then commenced this separate action on or about May 6, 1993. [App., Pg. A-29].

3. After the instant action (Case II) was filed, the Stepards moved to dismiss it raising on of the grounds that this action is subject to the rule of compulsory counter claims, and that it should have been brought as a counter-claim to Case I and not as a separate action. The District Court denied the Motion. [App., Pg. A-61]. The Ninth Circuit Court of Appeals did not rule on the issue.

4. In the complaint, the Respondent alleged that it had jurisdiction and that pursuant to 26 U.S.C. §§ 7401 and 7403, the action had been brought at the direction of the Attorney General and with the authorization and at the request of the Chief Counsel of the Internal Revenue Service. [App., Pg. A-3, ¶ 2]. Petitioners Joseph and Malania Stepard denied this allegation in their Answer [App., Pg. A-41]

5. Mr. Chisum in his capacity as Trustee of the Trusts[1] answered the complaint. The Respondent moved to strike Mr. Chisum's answer on the ground that he was not an attorney and could not represent either himself as Trustee of the Trusts or the Trusts themselves. The District Court granted the motion to strike and denied a Motion to Reconsider. [App., Pg. A-60].

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1 Although ITS was named as the Trustee of Chacah and Betach Trusts, ITS was actually a d/b/a under which Mr. Chisum operated. Thus, he claimed the authority to answer as Trustee for all three trusts. Jo-Mal, Chacah and Betach Trusts will all be referred to collectively as "Trusts" unless otherwise noted.

6. Once Mr. Chisum's answer had been stricken, and he was unable to afford an attorney to defend the Trusts, then Mr. Chisum, in his capacity as Trustee of the Trusts, assigned the Trusts' interest in the property to Mr. John Wilde and Mrs. Eileen Lipari, personally and not as Trustees of a trust. Mr. Wilde and Mrs. Lipari gave notice of the transfer of interest and moved to substitute themselves in the stead of Mr. Chisum and to change the caption to reflect the transfer. The Court would not permit Wilde or Lipari to be substituted, denying the Motion without prejudice [App., A-64] and instead ordered Wilde and Lipari to file a Motion to Intervene. The district court subsequently denied the Motion to Intervene finding that the transfer from the Trusts to Wilde and Lipari was fraudulent. That conclusion was affirmed by the Ninth Circuit. [App., Pg. A-2, n. 2]. Default judgment was also entered against Mr. Chisum. [App., Pgs. A-69 and A-71]

7. On June 29, 1998, the district court entered its judgment and order of foreclosure. [App., Pg. A-7]. The Petitioners promptly moved to vacate and dismiss on the ground that the court lacked jurisdiction. [App., Pg. A-91]. The district court denied the Motion. [App., Pg. A-15].

8. The Petitioners timely appealed to the Ninth Circuit, which affirmed the district court [App., Pg. A-1]. The Ninth Circuit denied the Petition for Rehearing. [App., Pg. A-5]. This Petition follows.

REASONS FOR GRANTING WRIT & ARGUMENT

1. In affirming the district court, the Ninth Circuit decided two important questions of law on federal court jurisdiction in a way that conflicts with its own decisions and decisions of a United States Court of Appeals and that also has not but should be decided by this court.

A. Jurisdiction Generally.

A United States District Court has generally such subject matter jurisdiction as the Congress shall establish and upon the conditions as the Congress may impose. "Federal courts are courts of limited jurisdiction. They possess only that power

authorized by Constitution and statute, (*cites omitted*), which is not to be expanded by judicial decree, (*cites omitted*)." *Kokkonen v. Guardian Life Ins. Co.*, 511 US 375, 377 (1994). *Bender v. Williamsport Area School Dist.*, 475 US 534, 541 (1986). The statutorily imposed **limits** upon federal jurisdiction are to be neither disregarded or evaded. *Owen Equipment & Erection Co. v. Kroger*, 437 US 365, 374 (1978). When the inquiry involves jurisdiction of the Federal Court, – the presumption at every stage of a cause is that the Court is without jurisdiction unless the contrary appears **in the pleadings and from the record** and the burden of establishing the existence of jurisdiction rests with the party asserting the existence of jurisdiction. *Kokkonen*, supra, 511 US at 377; *Miller & Lux Incorporated v. East Side Canal & Irrigation Company*, 211 US 293, 302 (1908).

When Congress prohibits the commencement of a civil action, unless certain specific acts are performed, the district Court has no jurisdiction over the subject matter until the **facts showing compliance are plead in the complaint** and established by proof should the facts alleged in the pleadings be denied. In other words, the Respondent had the responsibility of setting forth in the Complaint, the necessary facts to show compliance with specific acts imposed upon it by the Congress. *McNutt v. General Motors Accept. Corp.*, 298 US 178, 189 (1936). If the Plaintiff fails to allege the facts **in the Complaint**, the Court may not assume jurisdiction and proceed on the merits. *FW/PBS, Inc. v. Dallas*, 493 US 215, 231 (1990), citing *McNutt*, supra, at 189.

The fact that the Petitioners did not raise the jurisdictional defects until their post judgment motion [App., Pg. A-91] as the trial court, appellate court and this court are themselves duty bound to independently examine jurisdiction throughout the proceedings. *Andrus v. Charlestone Stone Products Co.*, 436 US 604 (1978); *Frederico Marin Gutierrez v. Waterman Steamship Corp.*, 373 US 206, 209 (1963), *reh den* 374 US 858.

In addressing the Petitioners' jurisdictional claim, the Ninth Circuit incorrectly limited its scope of review to the standards for

Rules 59 and 60, Federal Rules of Civil Procedure. The Petitioners' motion was more correctly presented under Rule 12(h)(3), Federal Rules of Civil Procedure and that because the Court lacked jurisdiction, it was necessary to vacate the judgment, whether it was based upon either of Rules 59 and 60, Federal Rules of Civil Procedure.

In the instant case, the Petitioners will show that the Respondent in the first circumstance plead jurisdictional facts in the complaint, but failed to show proof of those facts upon the Petitioner's denial in their answer. In the second circumstance, it will be shown that the Respondent failed to not only plead, but never proved compliance with the requisite conditions imposed by the Internal Revenue Laws. As a result, the judgment reducing the taxes to judgment and foreclosing the tax liens on the property are void.

B. Direction and authorization under 26 U.S.C. §§ 7401 and 7403.

Both 26 U.S.C. §§ 7401 and 7403 prohibit the commencement of any civil action to collect a tax under the Attorney General (or his delegate) and the Secretary (or his delegate) to direct and authorize and request the action to be taken. The authorization and request must be in writing. *Saltzman, IRS Practice and Procedure*, § 14.09 (1981)

The Respondent alleged in ¶ 2 of its complaint [App., Pg. A-30] that the Attorney General directed the action, with the authorization and at the request of the Chief Counsel of the Secretary of Treasury. The Petitioners denied this allegation in ¶ 2 of their Answer. [App., Pg. A-41]. Despite that denial, at no time did the Respondent produce the written direction, authorization and request, either in discovery, through disclosure or even during its Motion for Summary Judgment seeking to reduce to judgment the taxes alleged to be due and owing. The Respondent's Statement of Facts is found in the Appendix beginning at Page A-73. No authorization, request or direction is referred to in those Statement of Facts.

All of the lower courts that have decided the issue, including the Ninth Circuit have found that the direction, authorization and request is jurisdictional. *Palmer v. I.R.S.*, 118 F3d 1309 (9th Cir., 1997); *U.S. v. One 1941 Cadillac Sedan*, 145 F.2d 296 (7th Cir., 1944); *U.S. v. Twenty-Two Firearms*, 463 FSupp. 730 (D.Colo. 1979); *U.S. v. One 1972 Cadillac, Coupe DeVille, etc.*, 355 FSupp. 512, 514 (E.D.Ky., 1973). Jurisdiction has been been found when either the authorization has been produced or there has been no denial of jurisdiction.

Because the Petitioners denied the allegation that the suit was directed, requested and authorized, the burden shifted to Respondent to prove jurisdiction. The Respondent failed to prove the existence of jurisdiction. Therefore, the action should be dismissed.

C. Compliance with the deficiency procedures of 26 U.S.C. §§ 6212 and 6213.

Pursuant to 26 U.S.C. § 6212, the Secretary is authorized to send a Notice of Deficiency if the Secretary determines there is a deficiency. The Notice must be sent by certified mail. 26 U.S.C. § 6213(a) prohibits the assessment of any tax subject to the deficiency procedures and prohibits the any levy or commencement of any proceeding in court until the Notice of Deficiency is sent.

With this condition, it was necessary for the respondent to allege the facts in the complaint that the deficiency procedures have been complied with, and upon the Petitioners' denial prove that the deficiency procedures have been complied with. No allegation was made in the complaint [App., Pg. A-29] that the deficiency procedures were complied with and nothing in the record in reveals compliance with the deficiency procedures.

Only three published opinions from the lower courts could be found on compliance with the deficiency procedures. *United States v. Ball*, 326 F.2d 898 (4th Cir., 1964); *U.S. v. Wright*, 658 FSupp 1 (D.Alaska, 1986); *United States v. Williams*, 161 FSupp. 158 (E.D.N.Y., 1958). In each case, the courts found that the record did not contain any proof of compliance with the

deficiency procedures and in each case, the court decided against the United States. The Court in *Ball*, supra, vacated the district court judgment *sua sponte*.

Because there is no allegation in the complaint or evidence in the record to show compliance with the deficiency procedures. Therefore, this action should have been dismissed.

2. In affirming the district court, the Ninth Circuit decided an important question of law on compulsory counterclaims that has not but should be decided by this court.

The Petitioners were first to the Court house. They filed their complaint seeking to quiet title the internal revenue lien that arose from the assessments alleged to have been made against them. [App., Pg. A-19]. Both the Complaint in *Stepard v. United States*, CIV 93-0060 and *United States v. Stepard*, CIV 93-0919 involved the assessments for the years 1981 through 1985 and the liens arising therefrom.

In denying the Petitioners' Motion to Dismiss, the district court[2] merely focused on the form of actions between the two cases and not the underlying facts of the claims in each case.[3] Both actions clearly arose out of the same transactions, the assessments and liens arising therefrom, and thus, *United States v. Stepard* should have been brought as a counterclaim to *Stepard v. United States* instead of as a separate action. The only exception to this is if the action that would be the subject of the counter claim had not matured. 6 C *Wright and Miller & M. Kane, Federal Practice and Procedure*, § 1411, at 81 (2d Ed. 1990). Unfortunately, as was discussed in Part 1, ante, it has proven imposible to determine whether the cause matured, since

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2 The Ninth Circuit did not directly decide this issue. The only reference to this issue from the Ninth Circuit is that "the district court's orders" were affirmed. [App., Pg. A-3]

3 See *Hydranautics v. Filmtec Corp.*, 70 F.3d 533, 536 (9th Cir., 1995); *Burlington Northern R. Co. v. Strong*, 907 F.2d 707, 711 (7th Cir., 1990);

the Respondent still have yet to produce the documents showing that the action had been directed, authorized or requested. Had the approval been received before March 8, 1993, when the Respondent's answer was due in *Stepard v. United States* then *United States v. Stepard* is subject to the rule of compulsory counterclaims. Because it was not filed as a counterclaim it should be barred. *Baker v. Gold Seal Liquors*, 417 US 467, 469 n1. (1974)

3. In affirming the district court, the Ninth Circuit decided an important question of law on substitution of parties after transfer of interest in property that has not but should be decided by this court.

The necessity to transfer interest from the Trusts to John Wilde and Eileen Lipari was created by the district court's own action. The Court refused to permit Mr. Chisum to proceed as the Trustee of the trusts and struck his answer to the complaint. None of the Trusts had the financial resources to retain licensed counsel. Thus, it was necessary to make an assignment of interest to Mr. Wilde and Mrs. Lipari personally where they would not require an attorney.

Substitution should be permitted as long as the cause of action survives the transfer to a new party. *Elca Enter. v. Sisco Equip. Rental & Sales*, 53 F.3d 186, 190-91 (8th Cir., 1995). Transfers of property are governed by state law. See *Defense Supplies Corp. v. Lawrence Warehouse Co.*, 336 US 631, 634-35 (1949). In Arizona, actions that are not personal can be assigned. *Employers Casualty Company v. Moore*, 60 Ariz. 544, 547-48, 142 P.2d 414 (1943); *United Verde Copper Co. v. Jordan*, 14 F.2d 299, 301 (9th Cir., 1926). Rule 17(b), Arizona Rules of Civil Procedure.

Instead of substituting Wilde and Lipari for the Trusts and their Trustee Mr. Chisum, the Court ordered them to file a Motion to Intervene. Then after filing the Motion to Intervene, the district court concluded that it was a fraudulent transfer and denied the Motion. The Ninth Circuit upheld. [App., Pg. A-2 n3]

Because the substitution was not permitted no one was left withstanding to defend the property. This was improper. Eventually, default judgment was entered against Mr. Chisum and the Trusts. [App., Pgs. A-69 and A-71]

CONCLUSION

Accordingly and for the foregoing reasons, this Court should grant the Writ of Certiorari to the Ninth Circuit and remand this action with order that it be dismissed for lack or jurisdiction, or that it be dismissed for failure to bring this action as a compulsory counterclaim. In the alternative issue the Writ and remand it to the district court with Orders that Wilde and Lipari be substituted for the Trusts

RESPECTFULLY SUBMITTED this 17TH day of April, 2000.

JOSEPH G STEPARD

MALANIA M. STEPARD

c/o P.O. Box 3314
West Sedona, Arizona 86340
(520) 649-0945
Petitioners, In Pro Per

JOHN P. WILDE

EILEEN LIPARI

c/o 5804 West Vista Avenue #165
Glendale, Arizona 85301
(623) 842-1422
Petitioners, In Pro Per

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED AUG 13, 1999

UNITED STATES OF AMERICA	) No. 98-16682
Plaintiff-Counter-defendant Appellee	) D.C. No. CV-93-919 EHC
v.	)
	)MEMORANDUM[1]
INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust; JIMMY C. CHISUM	)
Defendants	)
and	)
JOSEPH G. STEPARD, MALANIA M. STEPARD; JOHN P. WILDE; EILEEN LIPARI	)
Defendants-counter	)

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted August 10, 1999[2]

Before: BROWNING, SCHROEDER, and PREGERSON, Circuit Judges.

Joseph and Malania Stepard appeal pro se the district court's orders denying their motions challenging the district court's order foreclosing on the Stepards' property and reducing to judgment federal tax assessments for their non-payment of federal income tax for tax years 1981-85.

We affirm the district court's decree of foreclosure allowing enforcement of federal tax liens on the Stepards' property and finding the tax liens valid, because the district court properly concluded the subject trusts and alleged transfers of ownership were invalid, after finding that the trusts were alter egos for the Stepards. See *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977); *Towe Antique FordFoundation v. I.R.S.*, 999 F.2d 1387, 1391 (9th Cir. 1993); *Hughes v. United States*, 953 F.2d 531, 537 (9th Cir. 1992). To the extent the Stepards seek to challenge this finding, the Stepards lack standing under *Maisano v. Welcher*, 940 F.2d 499 (9th Cir. 1991), since if the property belongs to the trusts, the Stepards have no standing to appear; and if the property actually belongs to the Stepards, they lose their argument that ownership was transferred to valid trusts. Id at 501.

The district court also did not err by denying the Stepards' motion to so aside default judgments, and the district court did not err by denying the Stepards' Fed. R. Civ. P. 59(e) and 60(b) motions to alter or amend judgment for lack of subject matter jurisdiction over them.[3]

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2 The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

3 Eileen Lipari and John Wilde appeal the denial of their motion to intervene as trustees for the Stepards Trusts. The Stepards had transferred ownership of their property to International Tax Strategies and to Jo-Mal Trust. The district court determined these conveyances were fraudulent and we

Accordingly, the district court's orders are

AFFIRMED.

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conclude Lipari and Wilde lack standing affirm its conclusion that the trustees may not seek to block the foreclosure. See Maisano v. Welcher, 940 F.2d 499 (9th Cir. 199 1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JAN 13, 2000

UNITED STATES OF AMERICA	No. 98-16682
Plaintiff-Counter-defendant Appellee	D.C. No. CV-93-919 EHC
v.	ORDER
INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust; JIMMY C. CHISUM	
Defendants	
and	
JOSEPH G. STEPARD, MALANIA M. STEPARD; JOHN P. WILDE; EILEEN LIPARI	
Defendants-counter	

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Before: BROWINING, SCHROEDER, and PREGERSON, Circuit Judges.

Appellants' petition for panel rehearing is denied.

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FILED JUN 29, 1998

UNITED STATES OF AMERICA	)
	)
Plaintiff	) Civ No. CIV-93-919 PHX EHC
	)
v.	)
	)JUDGMENT AND ORDER
	)OF FORECLOSURE
JOSEPH G. STEPARD, MALANIA M. STEPARD	)
	)
JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust	)
	)
INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust	)
	)
Defendants	)
	)

The Court, having granted the United States' Motion for Summary Judgment with respect to the federal income tax assessments at issue in this action on April 4, 1995, and further having entered default judgments on March 5, 1996, against defendants Jimmy C. Chisum d/b/a Jimmy C. Company, in his capacity as the trustee of Jo-Mal Trust, and International Tax Strategies, in its capacity as trustee of Betach LTO I Trust and Chacah LTO I Trust, and upon consideration of the "United States' Renewed Motion for Entry of Judgment and Order of Foreclosure," the

Court hereby issues a Judgment and Order of Foreclosure as follows:

IT IS HEREBY ORDERED AND ADJUDGED that defendant Joseph G. Stepard is indebted to the United States with respect to 1981 through 1985 for unpaid federal income taxes (and penalties and interest thereon), in the amount of $602,923.17, and that interest on such sum has continued and will continue to accrue in accordance with 28 U.S.C., Section 196 1 (c)(1) and 26 U.S.C., Section 662 1, until paid;

IT IS ORDERED AND ADJUDGED that defendant Malania M. Stepard is indebted to the United States with respect to 1981 through 1985 for unpaid federal income taxes (and penalties and interest thereon), in the amount of $593,509.16, and that interest on such sum has continued and will continue to accrue in accordance with 28 U.S.C., Section 1961(c)(1) and 26 U.S.C., Section 6621, until paid;

IT IS ORDERED AND ADJUDGED that federal tax liens relating to the federal tax liabilities described above attach to the real property commonly known as 120 Meander Way, Sedona, Arizona and legally described as follows;

LOTS 48 and 49, HARMONY HIGH PARK, according to the plat of record on file in the office of the County Recorder, Yavapai County, Arizona in Book 16 of Maps, page 67 and in Book 16 of Maps, page 62.

IT IS ORDERED AND ADJUDGED that the federal tax liens are valid and subsisting; that the tax liens give the United States an interest in the property; and, that 26 U.S.C. Section 7403 entitles the United States to enforce those liens against the property in order to satisfy Joseph G. Stepard and Malania M. Stepard's federal income tax liabilities.

Accordingly, and pursuant to, inter alia, Sections 7402(a) and 7403 of 26 U.S.C., and Sections 2001 and 2002 of 28 U.S.C.,

IT IS ORDERED AND ADJUDGED that:

1. The federal tax liens at issue are hereby enforced against the real property described above ("subject property"), and all improvements, buildings, and appurtenances thereon or thereto;

2. The United States Marshal for the District of Arizona ("The Marshal"), or such representative as he may appoint or employ, is authorized and directed under 28 U.S.C., Sections 2001 and 2002, to offer for public sale, and to sell the subject property, along with any improvements, buildings, and appurtenances thereon or thereto;

3. The United States Marshal or his representative is authorized to have free access to the subject property and to take all actions necessary to preserve the subject property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the property, until the deed to the subject property is delivered to the ultimate purchaser;

4. The terms and conditions of the sale are as follows:

a. The sale of the property shall be free and clear of the interests of Joseph G. Stepard, Malania M. Stepard, Jimmy C. Chisum, Jimmy C. Company, Jo-Mal Trust, International Tax Strategies, Betach LT01 Trust, Chacah LTO I Trust, John P. Wilde and Eileen Lipari;

b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the subject property, and easements and restrictions of record, if any;

c. The sale shall be held either on the premises of the subject property itself or any other place in accordance with the provisions of 28 U.S.C. Section 2001;

d. The date and time for sale are to be announced by the United States Marshal or his representative;

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Yavapai County, Arizona, and, at the discretion of the United States Marshal or his representative, by any other notice that he or his representative deems appropriate. The notice shall contain a description of the property and shall contain the terms and conditions of sale in this Order;

f. The sale of the property shall be subject to a minimum bid, the amount of which shall be determined by the United States at its sole discretion. If the minimum bid is not met or exceeded, the United States Marshal or his representative may, without further permission of this Court, and under the terms and conditions in this Order, hold a new public sale, if necessary, and reduce the minimum bid;

g. At the time of the sale, the successful bidder shall be required to deposit with the United States Marshal a minimum of ten (10) percent of the bid, with the deposit to be made by certified check, cashier's check or cash. Before being permitted to bid at the sale, bidders shall display to the United States Marshal, or his representative, proof that, if they were the successful bidder, they can make the deposit required by this Order;

h. The balance of the purchase price for the subject property is to be paid to the United States Marshal by the successful bidder within thirty (30) days following the date of the acceptance of the bid. The payment shall be made by certified check, cashier's check or money order payable to the United States Marshal for the District of Arizona. In the event that the bidder fails to fulfill this requirement, the deposit shall be forfeited and applied to cover the expenses of the sale, including commissions due under 28 U.S.C. Section, 192 1 (c), with any amount remaining to be applied to the income tax liabilities of Joseph G. Stepard and Malania M. Stepard for tax years 1981 through 1985. The subject property shall be again offered for sale in accordance with the provisions of this Order. The United States may bid as a credit against the outstanding tax liabilities of Joseph G. Stepard and Malania M. Stepard for 1981 through 1985 without tender of cash;

i. The sale of the property shall be subject to confirmation by this Court. Upon confirmation of the sale, the United States Marshal shall execute and deliver a quit claim deed conveying the property to the purchaser. Upon confirmation of the sale, all interests in, liens against, or claims to, the property that are held

or asserted by all parties to this action are discharged and extinguished;

j. With respect to any interests in, liens against, or claims to the property that are held or asserted by John P. Wilde and/or Eileen Lipari, said persons acquired the property with notice of this action and subject to the Court's adjudication of the property interests of the parties to this action;

k. The sale is ordered pursuant to 28 U.S.C. Section 2001 and is made without right of redemption.

5. Pending the sale of the property, Joseph G. Stepard and Malania M. Stepard shall take all reasonable steps necessary to preserve the real property (including all buildings, improvements, fixtures and appurtenances on the property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the property. They shall neither commit waste against the property nor shall they cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the property nor shall they cause or permit anyone else to do so. Joseph G. Stepard and Malania M. Stepard shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) that may directly or indirectly tend to adversely affect the value of the property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so;

6. All persons occupying the subject property shall leave and vacate the subject property permanently within thirty (30) days of the date of this Order, each taking with them their personal property (but leaving all improvements, buildings, and appurtenances to the property). If any person fails or refuses to leave and vacate the property by the time specified in this Order, the United States Marshal and his deputies are authorized and directed to take all actions that are reasonably necessary to bring about the ejectment of those persons. If any person fails or refuses to remove his or her personal property from the premises

by the time specified herein, the personal property remaining on the property thereafter is deemed forfeited and abandoned, and the Marshal and his deputies are authorized to remove it and dispose of it in any manner the Marshal sees fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the Court for further distribution.

7. When the sale of the subject property is confirmed by this Court, the County Recorder for Yavapai County shall permit the transfer of the property to be reflected upon that county's register of title.

8. After the confirmation of the sale of the subject property, the United States Marshal shall distribute the amount paid by the purchaser in the following order of preference, until that amount is exhausted: First, the Marshal shall retain an amount sufficient to cover the expenses of sale. Second, the Marshal shall pay all taxes unpaid and matured that are owed to the Yavapai County for property taxes on the subject property. Third, the Marshal shall pay to the United States by check made payable to the Internal Revenue Service and delivered by certified or overnight express mail addressed to Brian J. Feldman, Esquire, United States Department of Justice, Tax Division, 555 Fourth Street N.W. Room 7215, Washington. D.C., 20001, an amount to cover the federal tax liabilities (and the interest and penalties accrued thereon) of Joseph G. Stepard and Malania M. Stepard for tax years 1981 through 1985. In the event that the federal tax liabilities are satisfied, the Marshal shall interplead the balance remaining into the registry of the Court.

DATED this **26th** day of **June**, 1998.

BY THE COURT:

/s/ Earl H. Carroll
EARL H. CARROLL
United States District Judge

Submitted by:

BRIAN J. FELDMAN
Trial Attorney, Tax Division
U.S. Department of Justice

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FILED AUG 11, 1998

UNITED STATES OF AMERICA	)
	)
Plaintiff	) Civ No. CIV-93-919 PHX EHC
	)
v.	)
	) ORDER
	)
JOSEPH G. STEPARD, *et. al.*	)
	)
Defendants	)
	)

Before the Court is Defendants' Motion to Alter or Amend Judgment; Motion for Relief from Judgment; Motion to Dismiss. Defendants contend that the Court lacked jurisdiction to hear Plaintiff's complaint and therefore must set aside the June 29, 1998 judgment and dismiss this action for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3).

Motions to reconsider are rarely appropriate. "[W]here litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." Virgin Atlantic Airways v. Nat. Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) (internal quotations omitted). The groun6s for such a motion are narrowly defined:

> The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the

> Court. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt. Inc. v. Mel Bohannan Roofing. Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983). See also Sullivan v. Faras-RLS Group, Ltd., 795 F. Supp. 305, 308-309 (D. Ariz. 1992).

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). It should not be used to ask the court to rethink its decision:

> ... a motion for reconsideration is not the proper vehicle for revisiting issues that were decided ... or for a "recapitulation of the cases and arguments considered by the court before rendering its original decision." The party moving for reconsideration must show more than a disagreement with the court's decision; the court should not grant the motion unless there is a need to correct a clear error of law or prevent manifest injustice.

In re Worlds of Wonder Securities Litigation, 814 F. Supp. 850, 874 (N.D. Cal. 1993), rev'd in part on other gr., 35 F.3d 1407 (9th Cir. 1994) .

This is not the first time that the Defendants have asserted that the Court is without subject matter jurisdiction in this case. When the issue was initially raised, the Court considered the matter and was satisfied that it had subject matter jurisdiction. Defendants, repeated attempts to convince the Court otherwise are without merit.

Accordingly,

IT IS ORDERED denying Defendants' motion to alter or amend Judgment; motion for relief from judgment; motion to dismiss.

IT IS FURTHER ORDERED denying all pending motions as moot. This case is now closed.

DATED this 28th day of August, 1998.

/s/ Earl H. Carroll
Earl H. Carroll
United States District Judge

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JOSEPH G. STEPARD
MALANIA M. STEPARD
c/o P.O. Box 3314
West Sedona, Arizona 86340
(602) 282-3296

Filed Jan 08, 1993

Plaintiffs, In Pro Per

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOSEPH G. STEPARD MALANIA M. STEPARD	)
Plaintiffs	) Civ No. CIV-93-060 PHX RCB
v.	)
	) COMPLAINT
UNITED STATES	)
Defendants	)

COME NOW the Plaintiffs, Joseph G. and Malania M. Stepard and for their complaint allege and aver as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the action and the parties as set forth in 28 United States Code (USC), §§1331, 1340, 1361 and 2410.

2. Venue is proper under 28 USC, §§1408 and 1409.

II. WAIVER OF SOVEREIGN IMMUNITY

3. The United States has waived sovereign immunity as set forth in 28 USC, §§2410.

III. PROPERTY DESCRIPTION

4. At all times relevant thereto the Plaintiffs are and always has been the owner of their personal property in the form of their remuneration for their services, including future unpaid remuneration and one (1) Brown and Tan, 1984 Chevy Van – R/V Van, VIN 1GBEG25H2E7206046: "Hereinafter referred to as "property".

IV. PARTIES

5. Plaintiffs Joseph G. Stepard and Malania M. Stepard are natural individuals. They have been living at all material times in Yavapi County, Arizona.

6. The Defendant United States is a municipal Corporation, chartered in the District of Columbia and is doing business in the State of Arizona as a foreign Corporation known as the United States. In doing the acts herein alleged, the Defendant acted by and through its agency the Internal Revenue Service (IRS) and its employees, officers, agents and servants.

V. GENERAL STATEMENT

7. For the years 1981, 1982, 1984 and 1985, Liens have allegedly arisen against the Plaintiff Joseph G. Stepard in the amount of $10,876.29, $11,044.50, $92,418.00 and 84,219.00, respectively, after abatements alleged to have been made on September 28, 1992. The Liens arose out of assessments alleged to have been made on July 22, 1985 (1981), July 15, 1985 (1982) and October 3, 1988 (1984 and 1985).

8. A Notice of Lien was filed on March 13, 1992 in both the Yavapi and Coconino County Recorders' Offices in the State of Arizona. The Notice of Lien reflects only the amounts of the alleged assessments before the September 28, 1992 abatements.

9. For the years 1981, 1982, 1984 and 1985, Liens have allegedly arisen against the Plaintiff Malania M. Stepard in the amount of $10,876.00, $11,045.00, $92,418.00 and 84,219.00, respectively, for assessments alleged to have been made on September 28, 1992 for each of the years. As of the filing of this action no Notice of Lien has been recorded by the Defendant.

10. Prior to making the assessments the Defendant failed to make a determination of a deficiency prior to issuance of the Notices of Deficiency.

11. The Defendant did not record the assessments against the Plaintiffs, as set forth in IRC, §6203 and 26 CFR, §301.6203-1. The summary records of assessment were not signed or were not signed by the duly authorized delegate of the Secretary. The summary records of assessment do not otherwise identify the Plaintiffs, the character of the liability assessed, the taxable period, or the amount of the assessments alleged to have been assessed against the Plaintiffs. The identification information is neither contained in the summary records of assessment, nor are there any support documents which contain the information.

12. The Plaintiffs have made several requests for the summary records of assessments and have exhausted all required statutory and administrative procedures for obtaining them. Notwithstanding these requests, the Defendant has failed, refused and neglected to provide the Plaintiffs with the requested records.

13. The Defendant has otherwise failed to send the Plaintiffs Notices of the Assessment, as soon as practicable after the assessment and within 60 days of making the assessment, as set forth in IRC, §6303(a).

VI. CAUSE OF ACTION

14. The Plaintiffs reallege each and every allegation and averment of paragraphs 1 through 14, and incorporates the same by this reference, as if fully set forth herein.

15. The Plaintiffs are credibly informed and believes and therefore alleges that the Defendant is claiming or may claim an estate, title, interest, lien or right in and to the above described property or some part thereof, adverse to and in conflict with the Plaintiffs' rights, title and interest thereto.

16. Any claim or interest of the Defendant may be based in whole or in part upon the Liens in favor of the United States, which have arisen out of the assessments alleged to have been made against the Plaintiffs. The Liens may be evidenced by Notice(s) of Lien Under the Internal Revenue Laws that are

recorded in Arizona in the Yavăpi and Coconino County Recorders' Offices.

17. The Liens are arbitrary, capricious and invalid as the Defendant failed to made a determination of a deficiency before issuing Notices of Deficiency, failed to properly record the assessment and failed to give notice of the assessment and demand for payment within sixty (60) days after making the assessment.

18. Because the Defendant failed, refused and neglected to follow the mandatory statutory procedures before asserting and perfecting the Lien the Defendant has no legal right, title or interest in or to the property.

19. The Plaintiffs' interest in and title to their property hereinbefore described is superior to any claimed interest of the Defendant.

20. As a direct and proximate result, the assessments and liens have created a cloud upon the title of Plaintiffs' property and rights to property and the Plaintiffs have no other plain, speedy or adequate remedy to remove the cloud.

WHEREFORE, the Plaintiffs respectfully request the following relief:

A. Trial by jury on all issues, so triable; and,

B. The Defendant United States be required to set forth the right and nature of its claims to the Plaintiffs' property and rights to property; and,

C. That all adverse claims of the Defendant in and to said property be determined by a decree of this Court; and,

D. That this Court adjudge and decree;

1. That any alleged assessments and liens asserted by the Defendant are unlawful, invalid and void; and,

2. That title to Plaintiffs' property and rights to property be quieted to the Plaintiffs and against the Defendant; and,

3. That the Plaintiffs own and are entitled to quiet, lawful, continuous and peaceful use and possession of said property; and that the Defendant has no lawful or legal right, title, estate, lien or

interest whatsoever in or to said property, or any part thereof; and,

E. That the Plaintiffs be awarded reasonable fees and costs incident to the prosecution of this cause; and,

F. That the Court award such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 8th day of January, 1993.

/s/ Joseph G. Stepard
JOSEPH G STEPARD
c/o .0. Box 3314
West Sedona, Arizona 86340
(602) 282-3296
Plaintiffs, In Pro Per

/s/ Malania M. Stepard
MALANIA M. STEPARD

VERIFICATION

We, Joseph G. and Malania M. Stepard, do verify under penalty of perjury under the laws of the United States of America: that we are the Plaintiffs in the above captioned action, that we have read the Complaint and the foregoing is true and correct.

Date 1-6-93

/s/ Joseph G. Stepard
Joseph G. Stepad

Date 1-6-93

/s/ Malania M. Stepard
Malania M. Stepard

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LINDA A. AKERS
United States Attorney
4000 United States Courthouse
230 North First Avenue
Phoenix, Arizona 85025
Telephone: (602) 514-7500

ERIC M. CASPER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-3448

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOSEPH G. STEPARD MALANIA M. STEPARD	)
Plaintiffs	) Civ No. CIV-93-060 PHX RCB
v.	)
UNITED STATES	) ANSWER
Defendants	)

The United States of America, by its undersigned counsel, plaintiffs' complaint as follows:

1. Admits that the Court has jurisdiction, if at all, pursuant to 28 U.S.C. Section 1340, otherwise denies the allegations contained in paragraph 1 of the Complaint.

2. Admits that venue is proper under 28 U.S.C. Section 1396, otherwise denies the allegations contained in paragraph 2 of the Complaint.

3. Admits that the United States's sovereign immunity would be waived, if at all, pursuant to 28 U.S.C. Section 2410.

4. Denies the allegations contained in paragraph 4 of the Complaint.

5. Admits the allegations contained in paragraph 5 of the Complaint.

6. Denies the allegations contained in the first sentence of paragraph 6 of the Complaint. Admits the allegations contained in the second sentence of paragraph 6 of the Complaint to the extent it alleges that the United States acted through the Internal Revenue Service for the purposes of this lawsuit, denies that the Internal Revenue Service is a suable entity of the United States.

7. Denies the allegations contained in first sentence of paragraph 7 of the Complaint except admits that the assessments of federal income tax deficiencies for years 1981, 1982, 1984, and 1985 are for $30,218.29; $28,699.50; $194,629.00; and $178,637.00; respectively, plus statutory additions and interest, and admits that portions of each assessment against Joseph Stepard were abated on September 28, 1992. Admits the allegations contained in second sentence of paragraph 7 of the Complaint except to the extent the allegations imply that the Internal Revenue Service's tax liens for taxable years 1981 1982, 1984, and 1985 do not exist.

8. Admits the allegations contained in paragraph 8 of the Complaint.

9. Admits the allegations contained in first sentence of paragraph 9 of the Complaint except that the internal Revenue Service also assessed Malania Stepard for statutory additions and interest on September 28, 1992, for taxable years 1981, 1982, 1984, and 1985. Denies the allegations contained in the second sentence of paragraph 9 of the Complaint, avers that the Internal Revenue Service filed Notices of Federal Tax Lien reflecting assessments against Malania Stepard for taxable years 1981

through 1985 in Coconino County and Yavapai County on December 7, 1992.

10. Denies the allegations contained in paragraph 10 of the Complaint.

11. Denies the allegations contained in the first and second sentences of paragraph 11 of the Complaint. Denies the allegations contained in the third and fourth sentences of paragraph 11 of the Complaint except to the extent those sentences allege that the summary records of assessments, by themselves, do not individually identify the plaintiffs.

12. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and, therefore, they are denied.

13. Denies the allegations contained in paragraph 13 of the Complaint.

14. The United States incorporates by reference its answers to paragraphs I through 14 above.

15. Admits the allegations contained in paragraph 15 of theComplaint.

16. Admits that the United States has a lien against the plaintiffs' property and rights to property based on federal income tax assessments against the plaintiffs for the taxable years 1981, 1982, 1984, and 1985, and that the Internal Revenue Service has filed Notices of Federal Tax Liens against the plaintiffs regarding those years, otherwise denies the allegations contained in paragraph 16 of the Complaint.

17. Denies the allegations contained in paragraph 17 of the complaint.

18. Denies the allegations contained in paragraph 18 of the Complaint.

19. Denies the allegations contained in paragraph 19 of the Complaint.

20. Denies the allegations contained in paragraph 20 of the Complaint.

WHEREFORE, the United States requests the following relief:

A. That the Court dismiss all of plaintiffs' claims with prejudice; and,

B. That the Court provide such other relief as is just and proper.

Dated: March 9, 1993.

LINDA A. AKERS
United States Attorney

/s/ Eric M. Casper

ERIC M. CASPER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-3448

DANIEL G. KNAUSS
United States Attorney
4000 U.S. Courthouse
230 North First Avenue
Phoenix, Arizona 85025

BRIAN J. FELDMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6432

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA Plaintiff v. JOSEPH G. STEPARD, MALANIA M. STEPARD JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust Defendants	No. CIV-93-0919 PHX EHC COMPLAINT

The United States of America, by its undersigned attorneys, for its complaint alleges as follows:

1. This is a civil action brought by the United States of America to reduce to judgment the outstanding federal income tax liabilities assessed against defendants Joseph G. Stepard and Malania M. Stepard ("Taxpayers"); and to foreclose its tax liens against certain residential real property owned by Joseph G. Stepard and Malania M. Stepard.

2. This civil-action is brought pursuant to 26 U.S.C. Sections 7401 and 7403, at the direction of the Attorney General of the United States, with the authorization and at the request of the Chief Counsel of the Internal Revenue service, a delegate of the Secretary of the Treasury

3. The Court has jurisdiction over this action pursuant to 26 U.S.C., Section 7402, and 28 U.S.C., Sections 1340 and 1345.

4. Venue properly lies in this judicial district where the taxpayers, Joseph G. Stepard and Malania M. Stepard, reside, where the tax liabilities accrued and where the real property at issue in this suit is located.

5. The defendants, Joseph G. Stepard and Malania M. Stepard, both reside at 120 Meander Way, Sedona, Arizona 86326, within the jurisdiction of this Court.

6. Upon information and belief, defendant, Jimmy C. Chisum, is the trustee of the "Jo-Mal Trust" and he resides at 3310 W. Bell Road, #1008, Phoenix, Arizona 85023, within the jurisdiction of this Court.

7. Upon information and belief, defendant, International Tax Strategies, is the trustee of "Betach LT01 Trust" and "Chacah LT01 Trust" and its place of business is located at 3310 W. Bell Road #1008, Phoenix, Arizona 85023, within the jurisdiction of this Court.

8. The parties described in paragraphs 6 and 7, above, are named as parties pursuant to the provisions of 26 U.S.C. Section 7403(b) because they may claim some right, title, or interest in the property described in paragraph 9, below, in their capacity as

trustees of the Jo-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust.

9. The property in which foreclosure is sought is located at 120 Meander Way, Sedona, Arizona. The legal description of the property is as follows:

Lots 48 and 49, HARMONY HIGH PARK, according to the plat of record on file in the Office of the County Recorder, Yavapai County, Arizona in Book of Maps, page 67 and in Book 16 of Maps, page 62.

COUNT I

(Judgment for Unpaid Tax Assessments)

10. The plaintiff realleges the allegations of paragraphs 1 through 9.

11. On various dates, a delegate of the Secretary of the Treasury made assessments against the defendant, Joseph G. Stepard, for unpaid federal income taxes for the taxable years 1981, 1982, 1983, 1984 and 1985 as follows:

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT	OUTSTANDING BALANCE*
1040	12/31/81	7/22/85	(1) $30,218.29	
			(2) $13,334.29	
			(3) $2,501.47	
			(4) $452.89	
			(5) $1,725.57	
			(7) $229.50	$ 24,641.54
1040	12/31/82	7/15/85	(1) $28,699.50	
			(2) $ 7,938.41	
			(3) $ 1,844.22	
			(4) $ 154.98	
			(5) $ 2,105.62	
			(7) $ 24.00	$ 20,486.73

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT	OUTSTANDING BALANCE*
1040	12/31/83	10/3/88	(1) $30,879.00	
			(2) $ 4,921.39	
			(3) $ 585.08	
			(4) $ 53.34	
			(5) $ 1,693.75	
		8/02/89	(6) $ 7,719.75	
			(2) $ 6,427.51	
			(7) $ 6.00	$ 18,624.80
1040	12/31/84	10/03/88	(1) $194,629.00	
			(2) $ 88,886.00	
			(3) $ 21,377.99	
			(4) $ 4,870.99	
			(5) $ 20,115.50	
		8/02/89	(6) $ 48,657.25	
			(2) $ 27,107.04	
			(7) $ 24.00	$ 291,502.77
1040	12/31/85	10/03/88	(1) $178,637.00	
			(2) $ 59,661.83	
			(3) $ 15,463.33	
			(4) $ 4,821.60	
			(5) $ 21,041.25	
		08/02/89	(6) $ 44,659.25	
			(2)$17,557.07	$247,367.33
		TOTAL:		$602,923.17

(1) Assessed Tax.
(2) Assessed Interest.
(3) Negligence Penalty.
(4) Estimated Tax Penalty.
(5) Late Filing Penalty.
(6) Substantial Understatement Penalty.
(7) Fees and Collection Costs.

* The outstanding balance incorporates the fact that abatements of tax were made on September 28, 1992, with respect to the liabilities of Joseph G. Stepard that were in turn picked up as assessments against Malania M. Stepard on that same date. See paragraph 13, below.

12. Certain credits have been applied and abatements-have been made to the assessments described in paragraph 11, above. Presently, there is due and owing from Joseph G. Stepard on the assessments described in paragraph 11, above, the sum of $602,923.17, plus accrued but unassessed interest, penalties and other statutory additions thereon as provided by law.

13. On September 28, 1992, a delegate of the Secretary of the Treasury made assessments against the defendant, Malania M. Stepard, for unpaid federal income taxes for the taxable years 1981, 1982, 1983, 1984 and 1985 as follows:

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT	OUTSTANDING BALANCE*
1040	12/31/81	9/28/92	(1) $10,876.00	
			(2) $17,874.72	
			(3) $ 8,322.00	
			(4) $ 453.00	
			(5) $ 1,726.00	
			(6) $ 24.00	$ 35,303.72
1040	12/31/82	9/28/92	(1) $11,045.00	
			(2) $17,307.33	
			(3) $ 7,791.80	
			(4) $ 757.00	
			(5) $ 2,105.00	$ 36,382.13
1040	12/31/83	9/28/92	(1) $11,692.00	
			(3) $ 585.00	$ 225.00

TAX	TAX-PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT	OUTSTANDING BALANCE*
1040	12/31/84	9/28/92	(1) $ 92,418.00	
			(2) $115,417.49	
			(3) $ 50,788.25	
			(4) $ 4,871.00	
			(5) $ 20,116.00	$ 271,657.74
1040	12/31/85	9/28/92	(1) $ 84,219.67	
			(2) $ 96,931.67	
			(3) $ 42,983.70	
			(4) $ 4,822.00	
			(5) $ 21,041.00	$ 249,941.37
		TOTAL		$ 593,509.66

(1) Assessed Tax.
(2) Assessed Interest.
(3) Negligence Penalty.
(4) Estimated Tax Penalty.
(5) Late Filing Penalty.
(6) Fees and Collection Costs.

14. certain credits have been applied to the assessments against Malania M. Stepard described in paragraph 13, above, but there remains due and payable on said assessments the sum of $593,509.66, plus accrued but unassessed interest, penalties and other statutory additions thereon as provided by law.

15. Notice and demand for payment of the assessments described in paragraph 11, above, was made upon Joseph G. Stepard.

16. Notice and demand for payment of the assessments described in paragraph 13, above, was made upon Malania M. Stepard.

17. Despite notice and demand for payment, the defendants, Joseph G. Stepard and Malania M. Stepard, have neglected, failed and/or refused to fully pay the amounts set forth in paragraphs 12 and 14, above.

18. Joseph G. Stepard is indebted to the United States in the amount described in paragraph 12, above.

19. Malania M. Stepard is indebted to the United States in the amount described in paragraph 14, above.

COUNT II

(Fraudulent Conveyance)

20. The United States realleges the allegations of paragraphs I through 19 of the complaint.

21. As a result of the unpaid assessments described in paragraphs 11 and 13, above, pursuant to 26 U.S.C., Sections 6321 and 6322, the United States has liens in its favor against all property and rights to property belonging to Joseph G. Stepard and Malania M. Stepard.

22. Notices of federal tax lien relating to the assessments against Joseph G. Stepard described in paragraph 11, above, were filed with the County Recorders office for Yavapai County, Arizona, on or about March 14, 1986, July 15, 1988, September 7, 1989, and September 19, 1989.

23. A notice of federal tax lien for the taxes described in paragraph 11 above, was filed against "Jo-Mal Trust as the nominee of and/or successor in interest to Joseph Stepard" with the County Recorders Office for Yavapai County, Arizona on June 26, 1990.

24. A notice of federal tax lien relating to the assessments against Malania M. Stepard described in paragraph 13, above, was filed with the Yavapai County Recorders office on December 7, 1992.

25. On February 15, 1977, and March 10, 1978, Joseph G. Stepard and Malania M. Stepard, husband and wife, purchased the two adjacent pieces of residential property, Lots 48 and 49, described in paragraph 9, above.

26. On February 11, 1983, Joseph G. Stepard and Malania M. Stepard formed an entity entitled "the Jo-MAL Trust."

27. On March 15, 1983, Joseph G. Stepard and Malania M. Stepard purported to transfer all rights, title and interest in the property described in paragraph 9, above, to the Jo-Mal Trust. A warranty

deed purporting to reflect this transfer was recorded with the Yavapai County Recorder on March 15, 1983.

28. On January 30, 1989, the Jo-Mal Trust purported to transfer all rights, title and interest in Lot 48, one of the two adjacent properties described in paragraph 9, above, to the "Betach LT01 Trust", a trust formed on that same date. A warranty deed purporting to reflect this transfer was recorded with the Yavapai County Recorder on February 27, 1989. The warranty deed was executed by Jimmy C. Chisum for Jimmy C. Company, as trustee of Jo-Mal Trust.

29. On January 30, 1989, the Jo-Mal Trust purported to transfer all rights, title and interest in Lot 49, one of the two adjacent properties described in paragraph 9, above, to the "Chacah LT01 Trust", a trust formed on that same date. A warranty deed purporting to reflect this transfer was recorded with the Yavapai County Recorder on February 27, 1989. The warranty deed was executed by Jimmy C. Chisum for Jimmy C. Company, as trustee of Jo-Mal Trust.

30. Upon information and belief, International Tax Strategies is the trustee of both the Chacah LT01 Trust and the Betach LT01 Trust.

31. The purported transfers described in paragraphs 27, 28 and 29, above, were made for little or no consideration and were made solely for the use and benefit of Joseph G. Stepard and Malania M. Stepard, who have remained in continuous posession of the property.

32. At the time of these transfers, federal income taxes were due and owing by Joseph G. Stepard and Malania M. Stepard to the United States.

33. The purported conveyance of the subject property to the Jo-Mal Trust and the purported conveyance of the subject property from the Jo-Mal Trust to the Betach LT01 Trust and Chacah LT01 Trust were made with the intent to hinder, delay, or defraud the then present and future creditors of Joseph G. Stepard and Malania M. Stepard, including the United States of federal income taxes lawfully due or to be due. Such transfers are therefore of no

effect as to the United States and the United States may cause said conveyances to be set aside pursuant to the provisions of Arizona Revised Statute Section 44-1007.

34. Alternatively, the purported conveyances described above were made without fair consideration; the defendants Joseph G. Stepard and Malania M. Stepard were rendered insolvent thereby, and the transfers impaired the rights of the United States of its just and lawful debts. Such transfers are therefore fraudulent-and of no effect as to the just and lawful debts of the United States pursuant to the provisions of Arizona Revised Statute Section 44-1004.

35. Joseph G. Stepard and Malania M. Stepard remain owners of the property described in paragraph 9, above, despite the purported transfers described in paragraphs 27, 28 and 29, above.

COUNT III

(Alter Ego/Nominee)

36. The United States realleges the allegations of paragraphs I through 35 of the complaint.

37. Joseph G. Stepard and Malania M. Stepard dominated and controlled the Jo-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust. Joseph G. Stepard and Malania M. Stepard received little or no consideration for the purported transfer of the real property described in paragraph 9, above, and remained in continuous possession of the property after the purported transfers of the property. The io-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust are the alter egos of Joseph G. Stepard and Malania M. Stepard.

38. Joseph G. Stepard and Malania M. Stepard dominated and controlled the Jo-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust. Joseph G. Stepard and Malania M. Stepard received little or no consideration for the purported transfer of the real property described in paragraph 9, above, and remained in continuous possession of the property after the purported transfers of the Jo-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust are the alter egos of Joseph G. Stepard and Malania M. Stepard.

39. Property held in the name of the Jo-Mal Trust, the Betach LT01 Trust and the Chacah LT01 Trust is encumbered with liens for the unpaid tax assessments described in paragraphs 11 and 13, above.

COUNT IV

(Sham Transfers)

40. The United States realleges the allegations of paragraphs 1 through 39 of the complaint.

41. Neither the taxpayers or the trustees of the various trusts intended that the transfers described above operate to transfer ownership of the property described in paragraph 9, above.

42. The transfers described in paragraphs 27, 28 and 29 above, were shams, without economic substance, and did not operate to convey ownership of the property to the trusts or the trustees thereof.

43. Joseph G. Stepard and Malania M. Stepard remain owners of the property described in paragraph 9, above, despite the purported transfers described in paragraphs 27, 28 and 29, above.

WHEREFORE, the United States of America prays as follows:

A. That this Court determine and adjudge that the defendant, Joseph G. Stepard, is indebted to the United States of America in the amount of $602,923.17, plus further accrued butunassessed interest, penalties and other statutory additions thereon as provided by law, and that the United States recover judgment therefore;

B. That this Court determine and adjudge that the defendant, Malania M. Stepard, is indebted to the United States of America in the amount of $593,509.66, plus further accrued plus unassessed interest, penalties and other statutory additions thereon as provided by law, and that the United States recover judgment therefore;

C. That the Court determine, adjudge and decree that the March 15, 1983, and January 30, 1989, purported transfers of the property described in paragraph 9 of the complaint were fraudulent conveyances and of no effect as to the lien claims of the United States, and that they be set aside;

D. That the Court determine, adjudge and decree that the Jo-Mal Trust, Betach LT01 Trust and Chacah LT01 Trust are the alter egos of Joseph G. Stepard and Malania M. Stepard.

E. That the Court determine, adjudge and decree that the Jo-Mal Trust, Betach LT01 Trust and Chacah LT01 Trust are the nominees of Joseph G. Stepard and Malania M. Stepard.

F. That the Court determine, adjudge and decree that the March 15, 1983, and January 30, 1989, transfers of the property described in paragraph 9 of the complaint were shams and did no operate to transfer ownership of the property to Jo-Mal Trust, Betach LT01 Trust or Chacah LT01 Trust.

G. That this Court adjudge and decree that the United States has valid and subsisting liens against the property described in paragraph 9 of the complaint;

H. That the Court order that the federal tax liens of the United States be foreclosed upon the property described in paragraph 9 of the complaint and that said property be ordered sold by the United States Marshal at a judicial sale and that the proceeds thereof be first applied to the costs of such sale and that the balance of such proceeds be distributed to the United States and applied to the above described federal tax liabilities.

I. That the United States be awarded its costs and such other relief as is just and proper.

Dated this 6th day of May, 1993.

DANIEL G. KNAUSS
United States Attorney

/s/ Brian J. Feldman
BRIAN J. FELDMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6432

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JOSEPH G. STEPARD
MALANIA M. STEPARD
c/o P.O. Box 3314
West Sedona, Arizona 86340
(602) 282-3296

Filed Jul 13, 1993

Plaintiffs, In Pro Per

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA	)
	)
Plaintiff	) No. CIV-93-0919 PHX EHC
	)
v.	)
	)
JOSEPH G. STEPARD,	)
	)
Defendants	)
	)

ANSWER

The Defendants, Joseph G. Stepard and Malania M. Stepard, for their answer to the Complaint admit, deny and allege as follows:

1. The Defendants admit the United States has brought this action as alleged in Paragraph 1 of the Complaint. The Defendants further allege the United States has failed to join an indispensable party Plaintiff, as required by Rule 19, Federal Rules of Civil Procedure (FRCP) and that such failure will prevent this Court from rendering judgment without such party.

2. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint and therefore denies them.

3. The Defendants deny that this Court has jurisdiction as alleged in Paragraph 3 of the Complaint.

4. The Defendants deny the allegations of Paragraph 4 of the Complaint.

5. The Defendants deny that they are residents within this district as alleged in Paragraph 4 of the Complaint.

6. The Defendants are without information sufficient to for a belief as to the truth of the allegations in Paragraph 6 of the Complaint and therefore they deny them.

7. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint and therefore they deny them.

8. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint and therefore they deny them.

9. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and therefore they deny them.

10. The Defendants reallege each and every admission, denial and averment in Paragraphs 1 through 9 of the answer and incorporate the same by this reference as if fully set forth herein.

11. The Defendants deny the allegations of Paragraph 11 of the Complaint.

12. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and therefore they deny them.

13. The Defendants deny the allegations of Paragraph 13 of the Complaint.

14. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint and therefore they deny them.

15. The Defendants deny the allegations of Paragraph 15 of 10 the Complaint.

16. The Defendants deny the allegations of Paragraph 16 of 12 the Complaint.

17. The Defendants deny the allegations of Paragraph 17 of the Complaint.

18. The Defendants deny the allegations of Paragraph 18 of the Complaint.

19. The Defendants deny the allegations of Paragraph 19 of the Complaint.

20. The Defendants reallege their answers in Paragraphs 1 through 19, and incorporate the same, as if fully set forth herein.

21. The Defendants deny the allegations of Paragraph 21 of the Complaint.

22. The Defendants admit that Notices of Lien have been filed as alleged in Paragraph 22 of the Complaint.

23. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and therefore they deny them.

24. The Defendants admit that a Notice of Lien has been filed as alleged in Paragraph 24 of the Complaint.

25. The Defendants admit the allegations of Paragraph 25 of the Complaint.

26. The Defendants deny the allegations of Paragraph 26 of the Complaint.

27. The Defendants deny that the transfer purportedly occurred". The Defendants affirmatively allege that all rights title and interest to the property were at the time of the transfer vested in the "Joe-Mal Trust."

28. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and therefore they deny them.

29. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint and therefore they deny them.

30. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and therefore they deny them.

31. The Defendants deny the allegations of Paragraph 31 of the Complaint.

32. The Defendants deny the allegations of Paragraph 32 of the Complaint.

33. The Defendants deny the allegations of Paragraph 33 of the Complaint.

34. The Defendants deny the allegations of Paragraph 34 of the Complaint.

35. The Defendants deny the allegations of Paragraph 35 of the Complaint.

36. The Defendants reallege their answers in Paragraphs 1 through 35, and incorporate the same, as if fully set forth herein.

37. The Defendants deny the allegations of Paragraph 37 of the Complaint.

38. The Defendants deny the allegations of Paragraph 38 of the Complaint.

39. The Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint and therefore they deny them.

40. The Defendants reallege their answers in Paragraphs 1 through 39, and incorporate the same, as if fully set forth herein.

41. The Defendants deny the allegations of Paragraph 42 of the Complaint as relates to them. The Defendants are without information sufficient to form a belief as to the truth of the remaining allegations and therefore they deny them.

42. The Defendants deny the allegations of Paragraph 42 of the Complaint as relates to them. The Defendants are without information sufficient to form a belief as to the truth of the remaining allegations and therefore they deny them.

43. The Defendants deny the allegations of Paragraph 43 of the Complaint.

AFFIRMATIVE DEFENSES

The Defendants assert the following affirmative defenses of lack of jurisdiction over the subject matter, lack of jurisdiction of the person, failure to state claim upon which relief can be granted, failure to join an indispensable party Plaintiff as required by Rule 19, FRCP, failure to bring this action as a compulsory counterclaim to STEPARD v. UNITED STATES, CIV 93-0060 PHX RCB, as required by Rule 13, FRCP, failure to exhaust administrative remedies, pendency of another action, lack of

warrant of attorney, statutes of limitations, latches, res judicata, collateral estoppel and any other affirmative defense required to be plead in accordance with Rule 8, FRCP, as discoveryand further proceedings reveal.

WHEREFORE the Defendants respectfully request that this Court:

A. Dismiss this action and the Plaintiff take nothing.

B. Award Defendants costs and fees for defense of this action.

C. Award such other and further relief as the Court deems just and proper.

COUNTERCLAIM

The Counterclaimants Joseph G. Stepard and Malania M. Stepard, hereby allege and aver as follows.

1. For the years 1981, 1982, 1983, 1984 and 1985, the Count erdef endants are or may be claiming that the Counterclaimants have been assessed taxes, penalties and interest. Though the Counterclaimants deny that they have been assessed those amounts or that they have been validly assessed, the amounts claimed by the Counterdefendants are fully set forth in Paragraphs 11 and 13 of the Complaint.

2. That prior to assessing the taxes against Counterclaimant Joseph G. Stepard the Counterdefendant failed to issue Notices of Deficiency.

3. That prior to making the alleged assessments the Counter-defendant failed to issue valid Notices of Deficiency. The Notices of Deficiency were issued without determining the existence of a deficiency. The Counterdefendant did not otherwise calculate the amount of deficiency as the amount which exceeds the excess of the some of the amount shown on the return plus amounts previously assessed over the amount of rebates.

4. Prior to issuing the Notices of Deficiency, the Counter defendant failed to determine the basis of the Counterclaimants' liability to the taxes imposed by the Code.

5. The Counterdefendant did not assess any taxes determined by the Counterclaimant or the Secretary as to which returns or lists were made under the Internal Revenue Code (IRC).

6. The amounts assessed otherwise reflect assessments of estimated taxes.

7. The Notices of Deficiency were otherwise issued without taking into account certain credits, allowances and deductions to which the Counterclaimants are entitled. The Counterclaimants would request leave to amend this Counterclaim to reflect the credits, allowances and deductions as they are shown to exist.

8. The Counterclaimant Joseph G. Stepard's labor is his property. Prior to issuing the Notice of Deficiency, the Defendant failed to make a determination of the basis that Joseph G. Stepard had in his labor as required by IRC, 51015(a). The Counter defendant is otherwise proceeding as if the Counterclaimant had "zero" basis in his labor[1]. Counterclaimant Joseph G. Stepard has a "fair market value" basis in his labor. That the contractual arrangement between Joseph G. Stepard and American Airlines resulted in a transfer of property at the "fair market value."

9. The Counterdefendant did not otherwise record the assessments against the Counterclaimants, as set forth in IRC, §6203 and 26 CFR, §301.6203-1. The summary records of assessment were not signed or were not signed by the duly authorized delegate of the Secretary. The summary records of assessment do not otherwise identify the Counterclaimants, the character of the liability assessed, the taxable period, or the amount of the assessments alleged to have been assessed against the Counterclaimants. The identification information is neither contained in the summary records of assessment, nor are there any support documents which contain the information.

10. The Counterclaimants have made several requests for the summary records of assessments and have exhausted all required statutory and administrative procedures for obtaining them.

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1 If the Defendant is proceeding as if the Plaintiff has a "zero basis" in his labor, the Defendant has arranged thePlaintiff's affairs under IRC,§61(a)(a),"wages or compensation for services" which are includible in gross income. The Plaintiff's arrangement, based upon a "fair market value basis" is arranged under IRC, §61(a)(3) "gains derived from dealings in property." A transfer of property at the "fair market value" would result in no gain.

Notwithstanding these requests, the Count erdef endant has failed, refused and neglected to provide the Counterclaimants with the requested records.

11. That as a result of the foregoing, the Counterclaimants owe nothing to the Counterdefendant and there is no valid lien or other claim for taxes for any of the years at issue.

WHEREFORE, the Counterclaimants respectfully request relief as follows: triable; and,

A. That a trial by jury be had on all issues, so

B. The Counterdefendant United States be required to set forth the amount, validity and legality of the taxes claimed due and owing for each of the years.

C. The Court find that no tax is due and owing for any of the years.

D. That the Counterc1aimants be awarded reasonable costs incident to the prosecution of this counterclaim; and,

E. That the Court award such other and further relief as this court deems just and proper.

RESPECTFULLY SUBMITTED this 13th day of July, 1993.

/s/ Joseph G. Stepard
JOSEPH G. STEPARD
c/o P.O. Box 3314
West Sedona, Arizona 86340
(602) 282-3296
Defendants, In Pro Per

/s/ Malania M. Stepard
MALANIA M. STEPARD

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FILED APR 04, 1995

UNITED STATES OF AMERICA	)
	)
Plaintiff	) Civ No. CIV-93-919 PHX EHC
	)
v.	)
	) ORDER
	)
JOSEPH G. STEPARD, MALANIA M. STEPARD	)
	)
JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust	)
	)
INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust	)
	)
Defendants	)
	)

On May 13, 1993, Plaintiff, United States of America, filed a complaint pursuant to 26 U.S.C. SS 7401 and 7403, seeking to reduce to judgment outstanding federal income tax liabilities assessed against Defendants Joseph and Malania Stepard (hereinafter "Stepards") and to foreclose various tax liens against real property ,allegedly owned by the Stepards. The complaint also names Defendants Jimmy C. Chisum (hereinafter "Chisum,,) and International Tax Strategies (hereinafter "ITS") in their capacities as trustees or representatives of various entities created by the Stepards. See Complaint, 11 6-8.

On July 13, 1993, the Stepards filed their answer raising numerous affirmative defenses and a counterclaim alleging procedural irregularities associated with the manner in which the assessments and tax deficiencies were levied. On November 12, 1993, after service by publication, Chisum filed an answer in his capacity as trustee of various entities.

The Stepards and Chisum filed motions for summary judgment and a motion to dismiss. Plaintiff filed a cross-motion for summary judgment and a motion to strike Chisum's answer on the basis that a non-lawyer may not represent a trust or any other person. The Court granted Plaintiff's motion to strike on October 4, 1994. See United States v. Stepard, FSupp. _, 1994 WL 761188 (D.Ariz. 1994).

Currently pending before the Court are Defendants' motion for partial summary judgment, Plaintiff's cross-motion for summary judgment, and Defendants' motion to dismiss and second motion for summary judgment.[1] In addition, Chisum has filed a motion for a new trial or in the alternative a motion to amend the judgment and Plaintiff has filed a motion for default judgment as to Chisum and the various trusts for failure to properly appear in this action.

FACTUAL BACKGROUND

In 1977 and 1978 the Stepards acquired two adjacent parcels of residential property in West Sedona, Arizona. Due to philosophical differences and their interpretations of the Internal Revenue Code, the Stepards did not pay any income taxes for the tax years 1981-1985.[2] The parties agree that Plaintiff effectively

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1 For purposes of discussion, the Court will not distinguish between Defendants, motion for partial summary judgment and second motion for summary judgment.

2 It should be noted that Joseph Stepard has denied that his primary citizenship is that of the United States of America. See Government's Exhibit 3 [J. Stepard's answers to first set of interrog.], pg. 1, no. 2 and pg. 2, no. 5. Rather, Plaintiff claims to be a citizen of the State of Connecticut and asserts the Fourteenth Amendment does not apply to him.

became a creditor of the Stepards on April 15, 1982, after Defendants failed to file a return for the tax year 1981.[3]

In 1983 the Stepards created the "Jo-Mal Trust" and on March 15, 1983, by warranty deed purported to transfer all rights and title to the West Sedona properties to the trust. No monies or other tangible value was provided by the Jo-Mal Trust in exchange for the property. The Stepards assert the value provided in exchange for the property is the continued love and af f ection of the Stepards I children and the right to enjoy the use of the property for the remainder of their lives.

Notices of assessment and demands for payment were made on the Stepards as early as July 15, 1985. Thereafter, the United States filed notices of tax liens against the property with the Yavapai County Recorder's Office on or about March 14, 1986, July 15, 1988, September 7, 1989, September 19, 1989, and December 7, 1992.

On January 30, 1989, the Jo-Mal Trust purported to convey all of its holdings to two other trusts, the Betach LT01 and Chacah LT01 trusts. In each case the property was conveyed "for the consideration of ten dollars and other valuable [unspecified] consideration." Both warranty deeds were executed by Jimmy C. Chisum, for the Jimmy C. Company, as trustee of the Jo-Mal Trust. Chisum and related entities controlled by him currently act as trustees for the Chacah and Betach trusts.[4]

Despite the multiple purported conveyances, the Stepards continue to retain possession and exclusive use of the property. Moreover, no rent has been paid to the various trusts for the continued use of the property and the Stepards have continued to pay all expenses associated with the property including real estate taxes and utilities.

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3 Defendants admit this fact in their Second Motion for Summary Judgment at pg. 7, lines 12-14.

4 The beneficiary of these trusts is apparently the Adamah trust. The beneficiaries of the Adamah trust are the Stepards, three children.

DISCUSSION

Count I of the Complaint seeks judgment for unpaid taxassessments for the tax years 1981-1985 against the Defendant Joseph Stepard in the total amount of $602,923.17 and against Malania Stepard in the total amount of $593,509.66. Count II of the Complaint seeks foreclosure of tax liens in Plaintiff's favor against all property and rights to property belonging to the Stepards or their "alter-egos." In Counts III and IV, Plaintiff challenges the validity of the various conveyances of the Stepards" property and requests judgment that such transfers were "shams," or that the conveyances were completed with the intent to hinder, delay, or defraud the United States as a creditor.

I. MOTION TO DISMISS:

Defendants have filed a motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure based upon their assertion that the Court lacks subject matter jurisdiction. Defendants allege the Betach and Chacah trusts, which currently hold legal title to the subject property, are Arizona trusts established pursuant to the laws of Arizona and over which the Arizona courts have exclusive jurisdiction.

A. Standard of Review:

A complaint should be dismissed if it appears beyond doubt that a plaintif f can prove no set of facts in support of a claim which would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hunt-Wesson Foods, Inc. v. Ragu Foods, 627 F.2d 919, 924 (9th Cir. 1980), cert. denied, 450 U.S. 921 (1981).

In deciding a motion to dismiss, a court must presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party. Miree v. DeKalb County Georgia, 433 U.S. 25, 27 n.2 (1977); Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir.), cert. denied, 454 U.S. 1031 (1981). However, legal conclusions or characterizations in a complaint do not preclude disposal of a case on a motion to dismiss merely because they are cast in the

form of factual allegations, as such conclusions or characterizations are not entitled to a presumption of truthfulness. Western Mining, 643 F.2d at 624.

B. Analysis:

Defendants contend the Court has no jurisdiction over the trusts because jurisdiction over questions of internal trust management resides solely with the state Superior court. Defendants base their contention upon A.R.S. S 14-7201 which governs actions relating primarily to the administration of trusts.

The Government commenced this action in federal court as a proceeding initiated to enforce the internal revenue laws of the United States. Although legal title to the property may be held by a trust, this suit does not necessarily equate to an action brought to enforce or challenge the administration of a trust. This proceeding is properly characterized as one to enforce tax liens purportedly attaching to property originally held by putative taxpayers and later conveyed to the various trusts.

The Court's jurisdiction over this matter is established, in part, by 28 U.S.C. SS 1340 and 1345. Section 1340 provides, in pertinent part, that "[t]he district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue." Similarly, section 1345 provides, in part that, except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States." Neither of these provisions mandate consideration or deference to state law or in any way limit the Court's jurisdiction with respect to federal tax related matters. See U.S. v. Sarman, 699 F.2d 469, 470 (9th Cir. 1983) (per curiam) (finding district court would have jurisdiction to foreclose government's tax liens pursuant to these sections even if Nevada Probate Court had not granted the government leave to proceed in federal court).

In addition to vesting jurisdiction in this Court for all actions commenced by the United States generally, actions involving the internal revenue laws are specifically delegated to the district

courts. Pursuant to 26 U.S.C. S 7402(a), district courts have jurisdiction to issue any order "as may be necessary or appropriate for the enforcement of the internal revenue law." Further, section7403 states, in part:

> In any case where there has been a refusal or neglect to pay any tax . . . a civil action [may] be f iled in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, - to the payment of such tax or liability. -

26 U.S.C. S 7403(a).

Defendants have provided little to demonstrate the Court lacks jurisdiction over the subject matter of this case. Further, Defendants' characterization of this proceeding as one involving the internal administration of trusts is unpersuasive. The law supports this Court's exercise of jurisdiction.

Defendants acknowledge they have a right to the property as life tenants and Plaintiff asserts they have and maintain far greater rights. Construing the allegations raised in the Complaint most favorably to Plaintiff, the non-moving party, and in light of the statutes above, the Court finds it has jurisdiction over the subject matter of this case.

Accordingly, Defendants' motion to dismiss will be denied.

II. MOTIONS FOR SUMMARY JUDGMENT

Both parties moved for summary judgment; a review of the pleadings reveals three major issues: (1) whether Defendants did in fact owe federal income tax for the tax years 1981-1985; (2) whether this action was commenced within the periods provided by applicable statutes of limitations; and (3) whether the property legal title to which is held by various trusts, is subject to federal tax liens.

A. Standard for Review

Summary judgment is appropriate when the movant shows "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(c). "One of the principal purposes of the summary judgment rules is to isolate and disposes of factually unsupported claims." Celotex Corporation v. Catrett, 477 U.S. 317, 323-24 (1986). Substantive law determines which facts are material. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)

The dispute must also be genuine. A dispute about a material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 249. There is no issue for trial unless there is sufficient evidence favoring the non- moving party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Id. at 249-50. In a civil case, the question is:

> whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

Id. at 252;

The moving party who has the burden of proof on the issue at trial must establish all of the essential elements of the claim or defense for the court to find that the moving party is entitled to judgment as a matter of law. Fontenot v. Upjohn, 780 F.2d 1190, 1194 (5th Cir. 1986); Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986). However, the moving party need not disprove matters on which the opponent has the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). Thus, summary judgment is proper if the non-moving party fails to make a showing sufficient to establish

the existence of an essential element of their case on which they will bear the burden of proof at trial. Id.; See also High Tech Gays v. Defense Indus. Sec. Clearance Office, 895 F.2d 563 (9th Cir. 1990) (discussing differing burdens when moving party bears burden of persuasion at trial as compared with a case where the non-moving party bears the burden of persuasion at trial).

B. Analysis:

1. Tax Liability:

"Gross income" includes compensation for services including fees, commissions, fringe benefits, and similar items. See I.R.C. S 61(a)(1). Subjecting "wages" to the income tax is constitutional. Stelly v. Commissioner, 761 F.2d 1113, 1115 (5th Cir. 1985), cert. denied, 474 U.S. 851 (1985).

Defendants, argue they owed no income tax for the years at issue because Joseph Stepard earned no income during those years. Although !Defendants state they believe that wages or income are subject to taxation under the internal revenue code, Defendants also assert the monies Joseph Stepard received from American Airlines during those years does not constitute wages or income.

In an exercise of semantics, Defendants argue that Joseph Stepard was not an employee of American Airlines, did not earn "wages" from his job, and merely "sold" his labor for its fair market value. More specifically, Defendants posit that God created all men,. that all property has some cost or "basis" associated with its creation, that a man's labor is his own property, and that the "basis" in a man's labor is at least that which the market deem it is worth, i.e., the "fair market value." See Affidavit of Joseph Stepard, [file doc. no. 57], at 111[17 & 18. Thus, according to Defendants there can be no "gain" or "income" subject to taxation from the "sale" of one's own labor. The Court finds this contention unpersuasive.

The argument that compensation for services is taxable has withstood the challenge that the exchange of money for services of

the same value contained no element of gain or profit. See e.g. Lonsdale v. Commissioner, 661 F.2d 71 (5th Cir. 1985)(finding meritless the contention that "the exchange of services for money is a zero-sum transaction, the value of the wages being exactly that of the labor exchanged for them and hence containing no element of profit"); accord Davis v. U.S., 742 F.2d 171 (5th Cir. 1984); Lonsdale v. U.S., 919 F.2d 1440, 1448 (10th Cir. 1990).

A review of Defendants, position reveals few differences from the challenges presented in the above cited cases. Accordingly, Plaintiff is entitled to summary judgment with respect to this issue.

2. Statute of Limitations:

Defendants argue this action is time barred pursuant to A.R.S. S 44-1001 et seq., the Arizona Uniform Fraudulent Transfers Act. Specifically, Defendants assert Section 44-1009 renders Plaintiff's suit untimely because it was not commenced within four years of the transfer of property to the Jo-Mal Trust. Defendants argue that because any interest they may have had in the property was extinguished before the suit was filed, any interest held by the Government with respect to the property was also extinguished.

Defendants' contention that Arizona state statutes govern the time period allowed f or timely f iling of a civil proceeding commenced by the United States to collect taxes is unpersuasive. Although state statutes may define certain substantive rights, the statute of limitations governing suits for collection of taxes is a matter of federal concern and is governed by 26 U.S.C. S 6502(a)(1). See U.S. v. Christensen, 751 F.Supp. 1532 (D. Utah 1990) (finding under similar circumstances that United States is not bound by a state statute of limitation applicable to fraudulent conveyances), appeal dismissed, 961 F.2d 221 (10th Cir. 1992).

Section 6502(a)(1) provides, in pertinent part:

> (a) Length of period.–Where the assessment of any tax imposed by this title has been made within the period of limitations properly applicable thereto, such tax may be

collected by . . . proceeding in court, but only if the proceeding is begun

(1) within 10 years af ter the assessment of the tax.

26 U.S.C. § 6502(a)(1); See also Treasury Regulation § 301. 65021(a) and (c)(ii).

In this case, it is clear the assessments against the Stepards were made as early as July 15, 1985. This action was commenced in May 1993, well within the 10 year time period provided by the Internal Revenue Code. Accordingly, Plaintiff commenced this proceeding in a timely fashion.

3. Validity of Federal Tax Liens:

Once a taxpayer's liability for tax has been assessed, 26 U.S.C. § 6321 provides for a tax lien in favor of the United States upon all property and rights to property held by the taxpayer. Section 6321 is a broad provision which allows a lien to be placed even on property in possession of what is commonly referred to as an "alter ago." See G.M. Leasing v. U.S., 429 U.S. 338, 350-51 (1977); Wolfe v. U.S., 798 F.2d 1241, 1244-45 (9th Cir. 1986), as amended, 806 F.2d 1410, cert. denied, 482 U.S. 927 (1987). "The tax lien, created automatically upon the assessment of the tax, continues until the tax liability is satisfied or the lien becomes unenforceable by reason of lapse of time." U.S. v. Christensen, 751 F.Supp. 1532, 1535 (D.Utah 1990); See also 26 U.S.C. S 6322.

In this case, the property became subject to the liens as of April 15, 1982. See Edelson v. Commission, 829 F.2d 828, 833-34 (9th Cir. 1987)(finding tax liabilities due and owing at close of taxable year). The Stepards then transferred the property to the Jo-Mal Trust in March 1983. Plaintiff asserts the trusts merely hold the Stepard's property as nominees or "alter-egos" and that the Stepards' continued control and possession of the property is proof that no legitimate transfer occurred. See A.R.S. S 441004(B)(2). Further, Plaintiff contends that the transfer was made for little or no consideration, and at a time when federal income taxes were due and owing to the United States. See A.R.S. S 441004(B)(8) and (10). Thus, Plaintiff assert the transfers were

done for the sole purpose of hindering and defrauding creditors and may, therefore, be setaside pursuant to the provisions of Section 44-1007.

Under Arizona's Uniform Fraudulent Transfer Act, A.R.S. § 44-1001 et-seq. (hereinafter "U.F.T.A."), a transfer is fraudulent if, among other things, it is made with the "actual intent to hinder, delay or defraud any creditor of the debtor." A.R.S. § 44-1004(A). Under the terms of Act the United States would be a "creditor" of the Stepards if it had a "claim" to the property owned by the Stepards. A "claim" is defined as "a right to payment, whether or not the right is reduced to judgment, liquidated, or unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." A.R.S. S 44-1001(2); See also United States v. Ranch Located in Young, Arizona, slip op. No. 93pg. 3069, 3075 (9th Cir. March 21, 1995)(discussing and applying Arizona's Uniform Fraudulent Transfers Act in relation to drug forfeiture case).

As noted, Plaintiff acquired a claim to the property on April 15, 1982. Because this gave Plaintiff a valid claim and rendered it a creditor of the Stepards, the subsequent transfer of the property to the Jo-Mal trust is arguably voidable under section 44-1007 of the Act. Factual issues, however, preclude summary judgment on this issue.

Opposing Plaintiff's contentions Defendants assert that in exchange for the property the Jo-Mal trust provided consideration consisting of the continued love and affection of their children and permission to reside on the property for life. See Second Affidavit of Jimmy Chisum, (file doc. no. 56] at If 10. The fact that the Stepards continue to make all utility payments, pay all real estate taxes, and pay no rent or other monies to the trusts for the use and continued possession of the property, however, supports Plaintiff's contention that the transactions are mere "shams." Defendants assert, however, that their rights are not as pervasive as Plaintiff depicts. Defendants note that they have no right to sell or otherwise convey or encumber the property and are mere life

tenants who agreed to maintain the property including insurance and taxes in lieu of making rental payments to the trusts.

Unlike those cases in which the former owner is a trustee, the control exercised and retained in this case is less clear. See e.g. Don Gastineau Equity Trust v. U.S., 687 FSupp. 1422 (C.D.Cal. 1987)(noting importance of fact that former owner was also trustee and had power to terminate the trust at will). After review of the pleadings it is apparent that issues of fact regarding Defendants' intent in conveying the property, despite its appearance, precludes summary judgment regarding the validity of the transfers to the trusts and a determination as to whether the liens may be foreclosed.

III. JIMMY CHISUM'S MOTION FOR NEW TRIAL OR TO AMEND JUDGMENT:

Chisum's motion raises the same arguments presented in response to Plaintiff's motion to strike. In essence, Chisum Is motion is one for reconsideration. Motions to reconsider are appropriate only in rare circumstances:

> The motion to reconsider would be appropriate where, for example, the court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the court. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983); see also School Dist. No. 1J. Multnomah County, Or. v. ACandS, Inc., 5 F. 3d 1255, 1263 (9th Cir. 19931 , cert. denied 1114 S.Ct. 2742 (1994); Sullivan v. Faras-RLS Group, Ltd., 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

A motion for reconsideration should not be used to ask the court "to rethink what the court had already thought through–rightly or wrongly". Above the Belt, Inc., 99 F.R.D. at

101; See Refrigeration Sales Co. v. Mitchell -Jackson, Inc., 605 F. Supp. 6, 7 (N.D. Ill. 1983). Arguments that the court was in error on the issues it considered should be directed to the court of appeals. See Refrigeration Sales Co., 605 F. Supp. at 7.

Defendant's Motion raises no new issues which this Court did not already consider and reject. He has presented no new evidence or identified any significant changes in the law. Rather, he merely contests the Court's interpretation and application of the C.E. Pope case. C.E. Pope Equity Trust v. United States, 818 F.2d 696 (9th Cir. 1987). This is a matter which has already been considered and determined by the Court and Mr. Chisum's disagreement with the Court's ruling does not warrant reconsideration.

IV. OTHER MATTERS:

Two other matters require the Court's attention. First, Defendants assert this entire proceeding should be dismissed due to Plaintiff's alleged failure to raise these issues as compulsory counterclaims in a prior proceeding commenced by the Stepards in this district before Judge Broomfield. See CIV-93-0060-PHX-RCB Second, the Defendants, have filed a counterclaim in the case before this Court involving the same issues.

Defendants contention that Plaintiff's claims should have been brought as compulsory counterclaims is unpersuasive. The Stepards commenced the prior action pursuant to 28 U.S.C. § 2410. Actions commenced pursuant to section 2410 have limited scope, providing only for a taxpayer's challenge to the procedural validity of a tax lien.

A taxpayer may not challenge or attack the merits of the assessments. Elias v. Connett, 908 F.2d 521, 527 (9th Cir. 1990); But see Koff v. U.S., 3 F.3d 1297, 1298 (9th Cir. 1993) (noting contrary and resulting conflict). The statute itself coupled with Judge Broomfield's ,ruling, therefore, prevented any adjudication of the merits of the assessments. Accordingly, Plaintiff was not required to raise the instant claims in the prior proceeding.

Defendants' counterclaim challenging the procedural validity of the tax liens is neither proper nor subject to further review. First, to the extent Defendants challenge the procedural aspects of the liens in this case, such issues have been resolved by Judge Broomfield in the prior proceeding. See (Exhibit 4). As such,, the doctrine of res judicata prevents further review of the same issues.

Second, Certificates of Assessment were submitted along with a Form 2866 bearing the signature of Michael S. Bigelow, the Director of the Ogden Service Center for the Internal Revenue Service. See (Exhibit 1). The Ninth Circuit has held that Certificates of Assessment are admissible evidence when accompanied by Form 2866 certifications issued under seal. Hughes v. United States, 953 F.2d 531, 540 (9th Cir. 1992). The Certificates are official documents which, absent contrary evidence, establish that the assessments were made and demands for payment were sent. Id. at 535; See also Koff v. U.S., 3 F.3d 1297, 1298 (9th Cir. 1993). Thus, no procedural irregularities are apparent and Defendants have failed to present any credible evidence in support of their counterclaim. Accordingly, Defendants' counterclaim will be dismissed.

Accordingly,

IT IS HEREBY ORDERED denying Defendants' motion to dismiss [file doc. no. 54-1].

IT IS FURTHER ORDERED granting in part and denying in part Plaintiff's cross-motion for summary judgment [file doc. no. 49-1] and granting in part denying in part Defendants, motion for partial summary judgment and second motion for summary judgment [file doc. nos. 30-1 and 58-1]. Plaintiff is granted summary judgment with respect to the issue of Defendants Stepards, liability for income taxes during the years 1981-1985 and as to the timeliness of this action. Plaintiff is denied summary judgment with respect to its theories the trusts are alter-egos of the Stepards and regarding the voidability of the alleged transactions as Defendants' intent in engaging in the various conveyances involve arguable issues of fact. Consequently,

Defendants are also denied summary judgment as to the validity and propriety of their transfers.

ITIS FURTHER ORDERED denying Chisum's motion for reconsideration or for a new trial or amended judgment [file doc. nos. 72-1 and 72-21.

IT IS FURTHER ORDERED denying Plaintiff's motion for default judgment with respect to the trusts for failure to appear [file doc. no. 76], without prejudice to the filing of an application for entry of default and if default is entered, filing a further motion for entry of default judgment against the trusts.

DATED this 31st day of March, 1995.

/s/ Earl H. Carroll
Earl H. Carroll
United States District Judge

Copies to all parties

FILE COPY

United States District Court
for the District of Arizona
January 29, 1996

Civil Minutes - General

Case No. 2:93-cv-00919

Title: USA v. Stepard

DOCKET ENTRY

MINUTE ENTRY Judge Inits: EHC Crt Rptr: Bridget Brittan

Denying without prejudice the motion for order to transfer of interest by movant John P Wilde, movant Eileen Lipari [96-1],

denying without prejudice the motion for order to change caption by movant John P Wilde, movant Eileen Lipari [96-2] Dft John Wilde may file a motion to intervene within 15 days from todays date.

Denying motion to set aside default by dft Chisum dba International Tax Strategies [95-1],

taking under advisement on 1/29/96 the motion for default judgment against Jimmy C Chisum d/b/a Jimmy C Company and against Int'l Tax Strategies by pla [92-1],

granting motion to strike jury demand by pla U S A [89-1]

Further ordered that within 15 days from todays date John Wilde file, under oath, a memorandum stating his position in this matter.

Appearances: Brian Feldman, pla - Joseph and Malania Stepard, pro se, John Wilde, pro se [105-1]

CASE ASSIGNED TO: Hon. Earl H Carroll, Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FILED MAR 05, 1996

UNITED STATES OF AMERICA	)
	)
Plaintiff	) Civ No. CIV-93-919 PHX EHC
	)
v.	)
	)
	)
JOSEPH G. STEPARD, MALANIA M. STEPARD	)
	)
	) ORDER
JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust	)
	)
	)
	)
INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust	)
	)
	)
	)
Defendants	)
	)

Plaintiff United States seeks to reduce to judgment outstanding federal income tax liabilities assessed against Defendants Joseph and Malania Stepard. Plaintiff alleges that these Defendants transferred property to others in an attempt to defraud the United States as creditor, and so has named these others as Defendants.

Plaintiff's motion for default judgment against Chisum and ITS, and Defendant Chisum's motion to set aside default are before the Court for consideration.

Background:

In 1977 and 1978, Defendants Joseph and Malania Stepard (Stepards) acquired two adjacent parcels of residential property in West Sedona, Arizona. Due to philosophical differences and their interpretations of the Internal Revenue Code, the Stepards did not pay any income taxes for the tax years 1981-85[1]. The parties agree that Plaintiff effectively became a creditor of the Stepards on April 15, 1982, after Defendants failed to file a return for the tax year 1981[2].

In 1983 the Stepards created the "Jo-Mal Trust" and on March 15, 1983, by warranty deed purported to transfer all rights and title to the West Sedona properties to the trust. No monies or other tangible value was provided by the Jo-Mal Trust in exchange for the property. The Stepards assert the value provided in exchange for the property is the continued love and affection of the Stepards' children and the right to enjoy the use of the property for the remainder of their lives.

Notices of assessment and demands for payment were made on the Stepards as early as July 15, 1985. Thereafter, the United States filed notices of tax liens against the property with the Yavapai County Recorder's Office on or about March 14, 1986, July 15, 1988, September 7, 1989, September 19, 1989, and December 7, 1992.

On January 30, 1989, the Jo-Mal Trust purported to convey all of its holdings to two other trusts, the Betach LT01 and Chacah LT01 trusts. In each case the property was conveyed "for the consideration of ten dollars and other valuable (unspecified] consideration." Both warranty deeds were executed by Jimmy C.

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1 Joseph Stepard denies that his primary citizenship is that of the United States of America. See Government's Exhibit 3 (J. Stepard's answers to first set of interrog.], pg. 1, no. 2 and pg. 2, no. 5. Rather, Plaintiff claims to be a citizen of the State of Connecticut and asserts the Fourteenth Amendment does not apply to him.

2 Defendants admit this fact in their Second Motion for Summary Judgment at pg. 7, lines 12-14

Chisum, for the Jimmy C. Company, as trustee of the Jo-Mal Trust. Chisum and related entities controlled by him currently act as trustees for the Chacah and Betach trusts.[3]

Despite the multiple conveyances, the Stepards continue to retain possession and exclusive use of the property. Moreover, no rent has been paid to the various trusts for the continued use of the property and the Stepards have continued to pay all expense associated with the property including real estate taxes an utilities.

On May 13, 1993, Plaintiff, United States of America, filed complaint pursuant to 26 U.S.C. SS 7401 and 7403, seeking to reduce to judgment outstanding federal income tax liabilities assessed against the Stepards and to foreclose various tax liens against real property allegedly owned by the Stepards. The complaint also names Defendants Jimmy C. Chisum (Chisum) and International Tax Strategies (ITS) in their capacities as trustees or representatives of various entities created by the Stepards.

On July 13, 1993, the Stepards filed their answer raising numerous affirmative defenses and a counterclaim alleging procedural irregularities associated with the manner in which the assessments and tax deficiencies were levied. On November 12, 1993, after service by publication, Chisum filed an answer in his capacity as trustee of various entities.

The Stepards and Chisum filed motions for summary judgment and a motion to dismiss. Plaintiff filed a cross-motion for summary judgment and a motion to strike Chisum's answer on the basis that a non-lawyer may not represent a trust or any other person. The Court granted Plaintiff's motion to strike on October 4, 1994. United States v. Stepard, 876 F. Supp. 214 (D.Ariz. 1994). The Court further denied Chisum's motion for reconsideration, new trial, and amended judgment.

Chisum appealed the Court's order striking Defendants, answer/crossclaim/counterclaim, and the Court's order denying

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3 The beneficiary of these trusts is apparently the Adamah trust. The beneficiaries of the Adamah trust are the Stepards' three children.

Defendants, motion for a new trial. On May 22, 1995, the Ninth Circuit dismissed Chisum's appeal (dkt. #98).

On May 23, 1995, a pleading entitled "Notice of Transfer of Interest and Motion to Change Caption" was filed by John P. Wilde (Wilde) and Eileen Lipari (Lipari). According to this notice, Chisum, in his capacity as the trustee of the two trusts, conveyed the two parcels of property at issue in this action to Wilde and Lipari by two quitclaim deeds dated April 20, 1995, for "10 dollars and valuable considerations." Dkt. #96 Exhibit A.

Discussion:

Currently pending before the Court are Plaintiff's motion for default judgment against Chisum and ITS, and Defendant Chisum's motion to set aside default.

The Court struck Chisum's answer/crossclaim/counter-claim on October 4, 1994 because Chisum, as a non-attorney, cannot represent trust entities. No other answer has been filed on behalf of Chisum or ITS. The Clerk of the Court entered default against Chisum and ITS on April 14, 1995. On May 10, 1995 Plaintiff filed a motion for entry of default judgment against Chisum and ITS. Chisum did not respond to Plaintiff's motion, but filed a motion to set aside default on May 17, 1995. Plaintiff filed a response to Chisum's motion on May 24, L995 .

Plaintiff argues that the Court has already ruled that Chisum, a non-attorney, cannot represent the various trust entities involved in this action. Thus, Plaintiff urges that Chisum's motion to set aside default, filed on behalf of these organizations and signed only by him, should be stricken.

In his motion, Chisum argues only that default should be set aside because the Court's jurisdiction over the matter was ousted by Us appeal to the Ninth Circuit, and that if the Ninth Circuit overturned the Court's decision then setting aside default would be proper.

The Ninth Circuit dismissed Chisum's appeal on May 22, 1995. Neither Chisum nor legal counsel for Chisum or ITS has filed anything further with regard to the entry of default. No answer

has been filed by a legal representative on behalf of these organizations. A hearing on the matter was held on January 29, 1996.

The Court will grant Plaintiff's motion for default judgment against Chisum and ITS.

Accordingly,

IT IS ORDERED granting Plaintiff's motion for default judgment (dkt. #921).

IT IS FURTHER ORDERED denying Defendant Chisum's motion to set aside default (dkt. #95-1).

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment against Defendants Jimmy C. Chisum d/b/a Jimmy C. Company, in his –capacity as Trustee of the Jo-Mal Trust, and against International Tax Strategies.

DATED this 4th day of March, 1996.

/s/ Earl H. Carroll
Earl H. Carroll
United States District Judge

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FILED MAR 05, 1996

UNITED STATES OF AMERICA	)
	)
Plaintiff	) Civ No. CIV-93-919 PHX EHC
	)
v.	)
	)
JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust INTERNATIONAL TAX STRATEGIES	) JUDGMENT IN A CIVIL CASE
	)
Defendants	)

_____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS THEREFORE ORDERED AND ADJUDGED default judgment is entered in favor of plaintiff and against defendants Jimmy C. Chisum dba Jimmy C. Company in his capacity as Trustee of the Jo-Mal Trust, and against International Tax Strategies.

Date: March 5, 1996

RICHARD H. WEARE
Clerk/DCE
/s/ T. Chapman
(By) Deputy Clerk
T. Chapman

cc: all counsel

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JANET NAPOLITANO
United States Attorney
4000 United States Courthouse
230 North First Avenue
Phoenix, Arizona 85025

BRIAN J. FELDMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-3448

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA	)
	)
Plaintiff	) No. CIV-93-0919 PHX EHC
	)
v.	)
	)
JOSEPH G. STEPARD, MALANIA M. STEPARD JIMMY C. CHISUM d/b/a JIMMY C. COMPANY, in his capacity as Trustee of Jo-Mail Trust INTERNATIONAL TAX STRATEGIES, in its capacity as trustee of Betach LT01 Trust and Chach LT01 Trust	)STATEMENT OF FACTS IN)SUPPORT OF UNITED)STATES' CROSS-)MOTION FOR SUMMARY)JUDGMENT
	)
Defendants	)
	)

The United States of America, by and through its undersigned attorneys, submits the following statement of facts in support of its cross-motion for summary judgment. The exhibits referred to below are attached to the Declaration of Brian J. Feldman submitted herewith.

1. The United States commenced this civil action seeking to reduce to judgment the outstanding federal income tax assessments against taxpayers Joseph G. Stepard and Malania M. Stepard ("Stepar'ds") for tax years 1981 through 1985, and to foreclose federal tax liens against certain residential property. In support of its position that the subject property is subject to foreclosure, the United States' complaint sets forth three alternative causes of action, a nominee/alter ego claim, a sham transfer claim and a fraudulent conveyance claim. See Complaint filed herein.

2. The Stepards failed to file federal income tax returns for tax years 1981, 1983, 1984 and 1985. As a result, substitute returns were prepared on their behalf by the IRS Examination Division. A no liability return was filed by Joseph G. Stepard for tax year 1982. See Exhibits 1, 2, 4 (footnote 1), Exhibit 6, at pp. 7-8.

3. A delegate of the Secretary of the Treasury made assessments against the defendant, Joseph G. Stepard, for unpaid federal income taxes for the taxable years 1981, 1982, 1983, 1984 and 1985 as follows: See Exhibit 1.

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT -	OUTSTANDING BALANCE*
1040	12/31/81	7/22/85	(1) $ 30,218.29	
			(2) $ 13,334.29	
			(3) $ 2,501.47	
			(4) $ 452.89	
			(5) $ 1,725.57	
			(7) $ 229.50	$ 24,641.54

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT -	OUTSTANDING BALANCE*
1040	12/31/82	7/15/85	(1) $ 28,699.50	
			(2) $ 7,938.41	
			(3) $ 1,844.22	
			(4) $ 154.98	
			(5) $ 2,105.62	
			(7) $ 24.00	$ 20,486.73
1040	12/31/83	10/3/88	(1) $ 30,879.00	
			(2) $ 4,921.39	
			(3) $ 585.08	
			(4) $ 53.34	
			(5) $ 1,693.75	
		8/02/89	(6) $ 7,719.75	
			(2) $ 6,427.51	
			(7) $ 6.00	$18,624.80
1040	12/31/84	10/03/88	(1) $194,629.00	
			(2) $ 88,886.00	
			(3) $ 21,377.99	
			(4) $ 4,870.99	
			(5) $ 20,115.50	
		8/02/89	(6) $ 48,657.25	
			(2) $ 27,107.04	
			(7) $ 24.00	$ 291,502.77
1040	12/31/85	10/03/88	(1) $178,637.00	
			(2) $ 59,661.83	
			(3) $ 15,463.33	
			(4) $ 4,821.60	
			(5) $ 21,041.25	
		08/02/89	(6) $ 44,659.25	
			(2) $ 17,557.07	$ 247,367.33
		TOTAL:		$ 602,923.17

(1) Assessed Tax.
(2) Assessed Interest.
(3) Negligence Penalty.
(4) Estimated Tax Penalty.
(5) Late Filing Penalty.
(6) Substantial Understatement Penalty.
(7) Fees and Collection Costs.

* The outstanding balance amounts incorporate the fact that abatements of tax were made on September 28, 1992, with respect to the liabilities of Joseph G. Stepard that were in turn picked up as assessments against Malania M. Stepard on that same date as well as credits that have been applied to the outstanding indebtedness.

4. On September 28, 1992, a delegate of the Secretary of the Treasury made assessments against Malania M. Stepard, for unpaid federal income taxes for the taxable years 1981, 1982, 1983, 1984 and 1985 as follows: See Exhibit 2.

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT -	OUTSTANDING BALANCE*
1040	12/31/81	9/28/92	(1) $ 10,876.00	
			(2) $ 17,874.72	
			(3) $ 8,322.00	
			(4) $ 453.00	
			(5) $ 1,726.00	
			(6) $ 24.00	$ 35,303.72
1040	12/31/82	9/28/92	(1) $ 11,045.00	
			(2) $ 17,307.33	
			(3) $ 7,791.80	
			(4) $ 757.00	
			(5) $ 2,105.00	$ 36,382.13

TAX	TAX PERIOD	DATE OF ASSESSMENT	ASSESSED AMOUNT -	OUTSTANDING BALANCE*
1040	12/31/83	9/28/92	(1) $ 11,692.00	
			(3) $ 585.00	$ 225.00
1040	12/31/84	9/28/92	(1) $ 92,418.00	
			(2) $115,417.49	
			(3) $ 50,788.25	
			(4) $ 4,871.00	
			(5) $ 20,116.00	$271,657.74
1040	12/31/85	9/28/92	(1) $ 84,219.67	
			(2) $ 96,931.67	
			(3) $ 42,983.70	
			(4) $ 4,822.00	
			(5) $21,041.00	$249,941.37
		TOTAL		$593,509.66

(1) Assessed Tax.
(2) Assessed Interest.
(3) Negligence Penalty.
(4) Estimated Tax Penalty.
(5) Late Filing Penalty.
(6) Fees and Collection Costs.

5. Notice and demand for payment of the assessments described in paragraphs 3 and 4, above, was made upon Joseph G. Stepard and Malania M. Stepard. See Exhibits 1, 2, 4, 5.

6. The Stepards commenced a District Court action, Stepard v. United States, CIV-93-0060-PHX-RCB, in which they challenged the procedural validity of the various income tax assessments asserted against them for tax years 1981, 1982, 1984 and 1985 as well as the validity of the related tax liens. See Exhibits 4 and 5.

7. In Stepard v. United States, CIV-93-0060-PHX-RCB, the Stepards contended, among other things, that the assessments for the subject years were not properly made and that the required notice and demand letters were not sent. By Judgment and Order

entered January 13, 1994, the Court rejected the Stepards, arguments and granted summary judgment in favor of the United States. In reaching its result, the Court found that the Certificates of Assessments and Payments established that assessments were properly made and that the required notice and demand letters were sent to the Stepards. See Exhibit 4.

8. Having already found that the United States had presented sufficient evidence to refute the Stepards' allegations of procedural irregularity, the Court denied a motion for reconsideration filed by the Stepards by Court Order entered April 7, 1994. See Exhibit 5.

9. In his responses to the United States' interrogatories in this case, Joseph G. Stepard reiterates his view that the tax liens are invalid due to irregularities in the procedures thereby suggesting that the Stepards may attempt to raise arguments of procedural irregularity again in this action. See Exhibit 3, at p. 8.

10. In his interrogatory responses as well as in his deposition testimony, taxpayer Joseph G. Stepard indicates that he does not believe that wages constitute taxable income. This belief is premised on the notion that one has a fair market value cost basis in one's labor, thus, there is no gain to be recognized on the wages when earned. Exhibit 3, at p. 8; Exhibit 6, at pp. 11-12.

11. The residential property which is subject of this action consists of two adjacent parcels, Lots 48 and 49 ("subject property"), and is located at 120 Meander Way, West Sedona, Arizona. The subject property was purchased by Joseph G. Stepard and Malania M. Stepard on February 15, 1977, and March 10, 1978. See Exhibit 3, at p. 1; Exhibits 8, 9.

12. On February 11, 1983, an entity entitled "the Jo-MAL Trust" was created by Joseph G. Stepard and Malania M. Stepard. On March 15, 1983, Joseph G. Stepard and Malania M. Stepard purported to transfer all rights, title and interest in the property to the "Jo-Mal Trust." See Exhibit 7. Warranty deeds prepared by the Stepards purporting to reflect this transfer were recorded with the Yavapai County Recorder on March 15, 1983. See Exhibits 10, 11.

13. This purported transfer took place with Joseph G. Stepard and Malania M. Stepard receiving no money from the "JoMal Trust" for the transfer of the residence. See Exhibit 6, at pp. 29-30. The Stepards have produced no documents to indicate that any "Affidavit of Legal Value" was filed with respect to this transfer. Declaration of Brian J. Feldman, at ¶ 13.

14. After the purported transfer to the "Jo-Mal Trust," the Stepards continued to reside at the property and still reside at the property to this day. The Stepards never paid any rent to the "Jo-Mal Trust" for their use of the property and continued to pay all the bills associated with the property, including property insurance, real estate taxes, utilities and all maintenance expenses. See Exhibit 3, at p. 13; Exhibit 6, at pp. 30-31.

15. The "Jo-Mal Trust" had no income and there is no evidence that the trust ever held any asset other than the subject property. See Exhibit 6, at p. 31.

16. On January 30, 1989, the "Jo-Mal Trust" purported to transfer all rights, title and interest in Lot 48 to the "Betach LT01 Trust", a trust formed on that same date. A warranty deed purporting to reflect this transfer was recorded with the Yavapai County Recorder on February 27, 1989. The warranty deed was executed by two persons on behalf of a Jimmy C. Company, Trustee, and contains the language "for the consideration of ten dollars and other valuable consideration." The See Exhibits 13, 15.

17. On January 30, 1989, the "Jo-Mal Trust" purported to transfer all rights, title and interest in Lot 49 to the "Chacah LT01 Trust", another trust formed on that same date. A warranty deed purporting to reflect this transfer was recorded with the Yavapai County Recorder on February 27, 1989. The warranty deed was executed by two persons on behalf of a Jimmy C. Company, Trustee," and contains the language "for the consideration of ten dollars and other valuable consideration." See Exhibits 12, 14.

18. The subject property was the only asset held by the "Betach LT01 Trust" and the "Chacah LT01 Trust." The Affidavits of Disclosure filed for these two trusts list "International Tax

Strategies by Jimmy C. Chisum" as the trustee. See Exhibits 14 and 15.

19. After the purported transfers described in paragraphs 16 and 17, above, Joseph G. Stepard and Malania M. Stepard continued to live at the property and continue to live there to this day. Exhibit 3, at p. 13.

20. At no time after the purported transfers described in paragraphs 16 and 17, above, did the Stepards ever pay any rent to the "Chacah LT01 Trust" or "Betach LT01 Trust" for their use of the property. The Stepards continued to pay the bills associated with the property, including property insurance, real estate taxes, utilities and all maintenance expenses that arose in connection with the subject property. See Exhibit 6, at pp. 39-40.

21. Notices of federal tax lien relating to the assessments against Joseph G. Stepard-and Malania M. Stepard have been filed with the County Recorders Office for Yavapai County, Arizona. In addition, a notice of federal tax lien was filed against the "Jo-Mal Trust as the nominee of and/or successor in interest toJoseph Stepard-" See Exhibits 16-21.

Dated this 2nd day of June, 1994.

JANET NAPOLITANO
United States Attorney

/s/ Brian J. Feldman
BRIAN J. FELDMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6432

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing STATEMENT OF FACTS IN SUPPORT OF UNITED STATES' CROSS-MOTION FOR SUMMARY JUDGMENT has been made this 2nd day of June, 1994, by placing a copy thereof in the United States Mail in a government franked envelope addressed to:

Joseph G. Stepard, pro per
Malania M. Stepard, pro per
P.O. Box 3314
West Sedona, Arizona 86340

Jimmy C. Chisum
c/o 3310 West Bell Road, #1008
Phoenix, Arizona 85023

/s/ Brian J. Feldman
BRIAN J. FELDMAN
Trial Attorney
Tax Division
U.S. Department of Justice

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JOSEPH G. STEPARD
MALANIA M. STEPARD
P.O. Box 3314
West Sedona, Arizona 86340
(602) 282-3296

JIMMY C. CHISUM
in his capacity as Trustee
c/o 3310 West Bell Road #1008
Phoenix, Arizona 85023
(602) 465-7850

Defendants/Crossclaimants/Counterclaimants

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA	)
	)
Plaintiff	)
	)
v.	)No. CIV-93-0919 PHX EHC
	)
JOSEPH G. STEPARD,	)
	)
Defendants	)
	)

AMENDED AND SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

The Defendants, Joseph G. Stepard, Malania M. Stepard, Jimmy C. Chisum, d/b/a Jimmy C. Company, in his capacity as Trustee of Jo-Mal Trust and Jimmy C. Chisum d/b/a International Tax Strategies, in his capacity as Trustee of Betach LT01 Trust and

Chacah LT01 Trust hereby submit these amended and supplemental statement of facts in support of their Response to Plaintiff's Motion for Summary Judgment and Defendants, Second motion for Summary Judgment.

1. The Holy Bible is the word of God and is the law for all of his People and Creation. (Affidavit of Joseph G. Stepard, ¶ 2)

2. Defendant Joseph G. Stepard is bound in duty to His Law, Statutes, Commandments and Judgments. (Stepard Affidavit, ¶ 3)

3. That Defendant Joseph G. Stepard is a Man created by God Almighty. (Stepard Affidavit, ¶ 4)

4. Defendant Joseph G. Stepard's Life is given to him each day as an endowment (gift) from God. (Stepard Affidavit, ¶ 5)

5. The Labor of Defendant Joseph G. Stepard is his Property. (Stepard Affidavit, ¶ 6)

6. To the best of Defendant Joseph G. Stepard's knowledge and based upon the testimony of the Holy Scriptures, God is the original owner and creator of his Labor. (Stepard Affidavit, ¶ 7)

7. The Labor is received by Defendant Joseph G. Stepard each day as a part of the gift of his Life. (Stepard Affidavit, ¶ 8)

8. Defendant Joseph G. Stepard has been unable to directly determine the basis (cost) that God had in this labor at the time he gave it to the Defendant. (Stepard Affidavit, ¶ 9)

9. Neither, the Secretary, nor any of his delegates, has ever inquired of Defendant Joseph G. Stepard as to the basis (cost) Defendant's Creator had in the labor he gave to the Defendant each and every day of Defendant's life. (Stepard Affidavit,¶ 10)

10. None of the Notices of Deficiency for the years 1981 through 1985 that have been received by either Joseph G. Stepard or Malania M. Stepard have ever revealed that the Secretary has calculated the basis (cost) Joseph G. Stepard had in his labor. (Stepard Affidavit, ¶ 11)

11. From the year 1951 until 1953, Defendant Joseph G. Stepard worked at American Airlines and sold his labor under contract as a mechanic. (Stepard Affidavit, ¶ 12)

12. From the year 1953 until 1984, Defendant Joseph G. Stepard worked at American Airlines and sold his labor under contract as a flight engineer. (Stepard Affidavit, ¶ 13)

13. Based upon the provisions of Internal Revenue Code (IRC) § 1015(a), for property received by gift, or the common law, for property sold under contract, or both, Defendant Joseph G. Stepard has calculated that his basis (cost) in the labor he sold to American Airlines is equal to, if not greater than, the FAIR MARKET VALUE of the labor he sold. (Stepard Affidavit, ¶ 14)

14. During the year 1981, Defendant Joseph G. Stepard sold his labor each day that he worked at American Airlines. For the year 1981, he received $63,593.00 from American Airlines for the sale of his labor. He had a basis (cost) of at least $63,593.00 in the labor he sold to American Airlines. (Stepard Affidavit, ¶ 15)

15. During the year 1982, Defendant Joseph G. Stepard sold his labor each day that he worked at American-Airlines. For the year 1982, he received $70,740.00 from American Airlines for the sale of his labor. He had a basis (cost) of at least $70,740.00 in the labor he sold to American Airlines. (Stepard Affidavit, ¶ 16)

16. During the year 1983, Defendant Joseph G. Stepard sold his labor each day that he worked at American Airlines. For the year 1983, he received $78,383.00 from American Airlines for the sale of his labor. He had a basis (cost) of at least $78,383.00 in the labor he sold to American Airlines. (Stepard Affidavit, ¶ 17)

17. During the year 1984, Defendant Joseph G. Stepard sold his labor each day that he worked at American Airlines. For the year 1984, he received $83,282.00 from American Airlines for the sale of his labor. He had a basis (cost) of at least $83,282.00 in the labor he sold to American Airlines. (Stepard Affidavit, ¶ 18:

18. During the year 1984, Defendant Joseph G. Stepard received two lump sum payments totalling $323, 355. 00. Said amounts represented a disbursement of deferred payments which had accumulated during period he worked at American Airlines. These deferred payments were made, in addition to his direct remuneration during each year, for the labor he sold to American Airlines between 1951 and 1984. Defendant had a total

accumulated basis (cost) in the deferred payments of at least $323,355.00. (Stepard Affidavit, ¶ 19)

19. The Plaintiff is proceeding as if Joseph G. Stepard had a ZERO basis (cost) in his labor. [Stepard Affidavit, ¶ 20 Plaintiff's Response to Defendants' Second Set of Requests for Admissions, Request No. 10 (Attached as Exhibit 1)]

20. Defendant does state and declare that he believes that Wages" and "Compensation for Services" are in fact and law includible in gross income. (Stepard Affidavit, ¶ 21)

21. The money Joseph G. Stepard received from American Airlines for the sale of his labor during the years 1981, 1987-1983 and 1984 was not "wages" (remuneration for services) or compensation for services. (Stepard Affidavit, ¶ 22)

22. Joseph G. Stepard was not an "employee" of American Airlines during the years 1981, 1982, 1983 and 1984. He provided no "services" to American Airlines during these years. (Stepard Affidavit, ¶ 23)

23. After receiving the two lump sum payments totalling $323,355.00 in 1984, Defendant Joseph G. Stepard deposited the amount plus other saved amounts with A.G. Edwards & Sons, Inc. (Stepard Affidavit, ¶ 24)

24. During the year 1985, Joseph G. Stepard withdrew the entire amount from the account and closed it. The $376,838.00 reported by A.G. Edwards & Sons, Inc. represents the amount withdrawn. Any amount that would be taxable, if at all, would be the interest that accumulated during the period the amount was deposited with A.G. Edwards & Sons, Inc. Any tax on the principle, if there was any, would have been taxed in 1984 or earlier. (Stepard Affidavit, ¶ 25)

25. On January 8, 1993, Joseph G. Stepard and his wife filed an action in United States District Court in the district of the State of Arizona. (Stepard Affidavit, ¶ 26)

26. Said action is known as STEPARD v. UNITED STATES, CIV 0060 PHX RCB. The action involved the validity of the assessments for the years 1981, 1982, 1984 and 1985. (Stepard Affidavit, ¶ 27)

27. The issues in this and STEPARD v. UNITED STATES involve the same transaction or occurrence; i.e. whether taxes for 1981, 1982, 1984 and 1985 are due. On March 9, 1993, the United States answered but did not counterclaim. (Stepard Affidavit, ¶ 28)

28. On May 6, 1993, the United States filed this action independently of STEPARD v. UNITED STATES. (Stepard Affidavit, ¶ 29)

29. On February 15, 1977, Joseph G. and Malania M. Stepard took title, by special joint tenancy warranty deed, to "Lot forty nine (49), HARMONY HIGH PARK, according to the plat of record on file in the office of the County recorder of Yavapai County, Arizona in Book 16 of Maps, Page 67, and thereafter amended in Book 16 of Maps, Page 92." (Stepard Affidavit, ¶ 30)

30. On March 10, 1978, Defendants Joseph G. and Malania M. Stepard took title, by special joint tenancy warranty deed to "Lot fortyeight (48), HARMONY HIGH PARK, according to the plat of record on file in the office of the County recorder of Yavapai County, Arizona in Book 16 of Maps, Page 67, and thereafter amended in Book 16 of maps, Page 92.11 (Stepard Affidavit, ¶ 31)

31. Jimmy C. Chisum is doing business as (d/b/a) International Tax Strategies. (Second Affidavit of Jimmy C. Chisum, ¶ 2)

32. While doing business as and in the name of Interational Tax Strategies, Jimmy C. Chism is the Trustee of Chacha LT01 and Betach LT01. (2nd Chisum Affidavit, ¶ 3)

33. As Trustee of Chacha LT01 and Betach LT01, Jimmy C. Chisum holds legal and equitable title to the property. (2nd Chisum Affidavit, ¶ 46; 3rd Chisum Affidavit, ¶¶ 4-9)

34. On January 30, 1989, while d/b/a as Jimmy C. Company, Jimmy C. Chisum was appointed as one of the Trustees of Jo-Mal Trust. (Chisum Affidavit, ¶ 7)

35. During that time, Jimmy C. Chisum also held legal title to both of the above described properties. (Chisum Affidavit, ¶ 8)

36. On or about April 15, 1982, the United States became a creditor for any tax that might be due for the year 1981. (Stepard Affidavit, ¶ 35)

37. Jo-Mal Trust was created in Yavapai County and the Trust instrument was recorded on February 11, 1983 in Book 1515, Pgs. 584 586 of Records of the County Recorder, Yavapai County, Arizona. It was administered by the Trustees in Maricopa County, Arizona until the property was exchanged into Chacah LT01 and Betach LT01. (Chisum Affidavit, ¶ 9)

38. On March 15, 1983, Defendants Joseph G. and Malania M. Stepard exchanged, by warranty deed, all rights, title and interest in both Lot 48 and Lot 49 into "Jo-Mal Trust." (First Stepard Affidavit, ¶ 6)

39. The taxes for the year 1981, which the Plaintiff alleges Defendant Joseph G. Stepard is liable to pay, were allegedly assessed on July 22, 1985. (Complaint at ¶ 11, Exhibit 1 Attached to Plaintiff's Statement of Facts)

40. On or about April 15, 1983, the United States became a creditor for any tax that might be due for the year 1982. At the time of the exchange into "Jo-Mal Trust" the United States was a creditor for taxes due for the year 1981. The United States was not a creditor for 1982, 1983, 1984 and 1985. (Stepard Affidavit, ¶ 30)

42. Based upon Defendant Jimmy C. Chisum's know-ledge and understanding of the structure of Jo-Mal Trust at the time he became Trustee, the consideration to be received by Joseph G. Stepard and Malania M. Stepard for the exchange of the property into Trust and which was agreed to between them and Jo-Mal Trust was the love and affection of their children and life tenancy upon the premises as long as they lived. (Chisum Affidavit, ¶ 10)

43. Upon the death of both Joseph G. Stepard and Malania M. Stepard the assets of the Trust would be distributed to the beneficiaries of the Trust, which are the children of Joseph G. Stepard and Malania M. Stepard. (Chisum Affidavit, ¶ 11)

44. As Trustee of Jo-Mal Trust, Jimmy C. Chisum had Chacah LT01 and Betach LT01 Land Trusts created and exchanged the real property from Jo-Mal Trust to each trust. (Chisum Affidavit, ¶ 12)

45. Chacah LTOl and Betach LT01 were created in Yavapai County. The Affidavit of Trust Disclosure for Chacah LT01 was recorded in Book 2125, Page 654 of Records of the County Recorder, Yavapai County, Arizona. The Affidavit of Trust Disclosure for Betach LT01 was recorded in Book 2125, Page 658 of Records of the County Recorder, Yavapai County, Arizona. (Chisum Affidavit, ¶ 13)

46. Both Land Trusts are administered by Jimmy C. Chi-sum in Maricopa County, Arizona. (Chisum Affidavit, ¶ 14)

47. Upon the exchange of the property from Jo-Mal to Chacha LT01 and Betach LT01 Land Trusts the same consideration under JoMal would continue and continues to date. (Chisum Affidavit, ¶ 15)

48. As Trustee of Chacha LT01 and Betach LT01 Land Trusts Jimmy C. Chisum have control over the property as long as he properly carries out his fiduciary responsiblities in accordance with the terms and conditions of the Trust instrument. (Chisum Affidavit, ¶ 16)

49. Neither Joseph G. Stepard nor Malania M. Stepard have any authority or right to transfer, sell or exchange said property. Any such transfer, sale or exchange would be void and would be set aside in an Arizona superior Court under the provisions of ARS, 5 14-7201, et. seq. (Chisum Affidavit, ¶ 17)

50. Joseph G. Stepard and Malania M. Stepard are nothing more than tenants on the property. As a condition of their life tenancy they agreed to maintain the property in a safe, usable and clean condition and to pay the property taxes. (Chisum Affidavit, ¶ 18)

51. The taxes are paid in the names of both Chacah LT01 and Betach LT01. For the ease and convenience of the Trustee the tax notices sent directly to Joseph G. Stepard for both Trusts. The Trustee lives in New River, Arizona which is in Maricopa County and about 70 miles from West Sedona, where the property is located and 70 miles from Prescott, where the County Assessor is located. (Chisum Affidavit, ¶ 19)

52. At the time the exchanges were made from Joseph G. Stepard and Malania M. Stepard to Jo-Mal Trust and from Jo-Mal Trust to Chacah LT01 and Betach LT01 no "Affidavit of Legal Value" was made or recorded as it was exempt under the provisions of ARS, § 42-1614.B.8. (Chisum Affidavit, ¶ 20)

RESPECTFULLY SUBMITTED this 8th day of August, 1994.

/s/ Joseph G. Stepard
JOSEPH G. STEPARD
c/o P.O. Box 331
West Sedona, Arizona 86340
(602) 282-3296
Defendants, In Pro Per

/s/ Malania M. Stepard
MALANIA M. STEPARD

/s/ Jimmy C. Chisum
JIMMY C. CHISUM, d/b/a
JIMMY C. COMPANY, in his
Capacity as Trustee of
Jo-Mal Trust
c/o 3310 W. Bell Road #1008
Phoenix, Arizona 85032
(602) 465-7850

/s/ Jimmy C. Chisum
JIMMY C. CHISUM, d/b/a
INTERNATIONAL TAX
STRATEGIES in his
capacity as Trustee of
Betach LT01 and Chacah
LT01

JOSEPH G. STEPARD
MALANIA M. STEPARD
P.O. Box 3314
West Sedona, Arizona 86340
(602) 282-3296

JIMMY C. CHISUM
in his capacity as Trustee
c/o 3310 West Bell Road #1008
Phoenix, Arizona 85023
(602) 465-7850
Defendants/Crossclaimants/Counterclaimants

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA	)No. CIV-93-0919 PHX EHC
	)
Plaintiff	)
	)MOTION TO ALTER OR
v.	)AMEND JUDGMENT;
	)MOTION FOR RELIEF FROM
JOSEPH G. STEPARD,	)JUDGMENT; MOTION TO
	)DISMISS
Defendants	)
_____	)

The Defendants hereby move this Court, pursuant to Rules 59(e) and 60(b)(4), Federal Rules of Civil Procedure (FRCP), for its Order Altering or Amending and Relieving them from the June 29, 1998 Judgment and Order of Foreclosure. The Defendants hereby further move this Court, pursuant to Rule 12(h)(3), FRCP to dismiss this action. The grounds for this motion are that the judgment is void as this Court lacked jurisdiction to entered said judgment and the jurisdiction defects are such that they could not be timely cured by amending the complaint.

This Motion is supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 8th day of July, 1998.

/s/ Joseph G. Stepard
JOSEPH G. STEPARD
c/o P.O. Box 331
West Sedona, Arizona 86340
(602) 282-3296
Defendants, In Pro Per

/s/ Malania M. Stepard
MALANIA M. STEPARD

/s/ John P. Wilde
JOHN P. WILDE
c/o 5804 West Vista Avenue
Glendale, Arizona 85301
(602) 841-4775
Defendants, In Pro Per

/s/ Eileen Lipari
EILEEN LIPARI

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STATUTES

26 U.S.C. § 6212(a) and (b)

Sec. 6212. Notice of deficiency

(a) In general. If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency. (1) Income and gift taxes and certain excise taxes. In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return. In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax. In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

26 U.S.C. § 6213(a)

Sec. 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment. Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

26 U.S.C. § 7401

Sec. 7401. Authorization

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

26 U.S.C. § 7403

Sec. 7403. Action to enforce lien or to subject property to payment of tax

(a) Filing. In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

(b) Parties. All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) Adjudication and decree. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale

such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

(d) Receivership. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

RULES

Rule 12(h), Federal Rules of Civil Procedure

Rule 12. Defenses and Objections–When and How Presented–By Pleading or Motion–Motion for Judgment on the Pleadings

(h) Waiver or Preservation of Certain Defense. (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19 , and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a) , or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13, Federal Rules of Civil Procedure

Rule 13. Counterclaim and Cross-Claim.

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading

the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13 .

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the United States. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter

either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20 .

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b) , judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 24, Federal Rules of Civil Procedure

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order,

requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense or which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

Rule 25, Federal Rules of Civil Procedure

Rule 25. Substitution of Parties.

(a) Death. (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution

is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation From Office. (1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

Rule 17(b), Arizona Rules of Civil Procedure

Rule 17. Parties Plaintiff and Defendant; Capacity

(b) Actions by personal representatives; setting aside judgment. Actions for the recovery of personal property, debts or damages, and for the title to or possession of lands, or for any right attached thereto or arising therefrom, or for an injury or damage thereto may be commenced by an executor, administrator, or guardian appointed in this state in the same manner as if commenced by the testator or intestate, and judgment therein shall be as conclusive as if rendered in favor of or against the testator or intestate. The judgment may be set aside upon the application of any person interested for fraud or collusion on the part of the executor, administrator or guardian.